United Nations

A/HRC/33/61

General Assembly

Distr.: General
19 July 2016

Original: English

Human Rights Council
Thirty-third session
Agenda item 9
Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Report of the Working Group of Experts on People of African Descent on its seventeenth and eighteenth sessions*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Working Group of Experts on People of African Descent on its seventeenth and eighteenth sessions, prepared pursuant to Council resolutions 9/14, 18/28 and 27/25. During its seventeenth session, held in Geneva from 23 to 27 November 2015, the Working Group held private discussions. Its eighteenth session, held in Geneva from 11 to 15 April 2016, focused on the theme of "Interlinkages between recognition, justice and development". Acknowledging the interdependence and interrelatedness of the three pillars of the International Decade for People of African Descent, the Working Group reiterated its recommendations made to States, international organizations, civil society and United Nations agencies, funds and programmes at its previous sessions with regard to the three pillars of the International Decade. It emphasized the importance of full implementation of General Assembly resolution 69/16, including its provisions for the establishment of a forum to serve as a consultation mechanism and for the drafting of a United Nations declaration on the promotion and full respect of the human rights of people of African descent. The Working Group also called for the development of comprehensive national action plans to tackle racism, racial discrimination, xenophobia, Afrophobia and related intolerance and urged all stakeholders to actively oppose negative stereotyping of people of African descent on the basis of ethnicity, religion and origin, with a specific focus on combating hate speech and incitement to hatred through media and political statements.

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I. Introduction

1. The Working Group of Experts on People of African Descent held its seventeenth session from 23 to 27 November 2015 and its eighteenth session from 11 to 15 April 2016 at the United Nations Office at Geneva. The seventeenth session was attended by all the members: Michal Balcerzak, Sabelo Gumedze, Mireille Fanon Mendes-France, Verene Shepherd and Ricardo A. Sunga III. Ms. Shepherd completed her term as member of the Working Group at the end of November 2015. Her successor, Mr. Ahmed Reid (Jamaica), was appointed in December 2015 and joined Mr. Balcerzak, Ms. Fanon Mendes-France and Mr. Sunga at the eighteenth session of the Working Group. The present report is submitted in accordance with Human Rights Council resolutions 9/14, 18/28 and 27/25, in which the Working Group was requested to submit an annual report to the Council on all activities relating to its mandate. The report is focused mainly on the deliberations at the eighteenth session of the Working Group.

2. Representatives of Member States, the Holy See, international organizations, regional organizations and non-governmental organizations (NGOs) and invited panellists participated in the eighteenth session of the Working Group (see annex).

II. Organization of the eighteenth session

A. Opening of the session

3. Mona Rishmawi, Chief of the Rule of Law, Equality and Non-Discrimination Branch of the Office of the United Nations High Commissioner for Human Rights (OHCHR), opened the session and welcomed all participants.

4. Kate Gilmore, Deputy High Commissioner for Human Rights, in her opening statement expressed appreciation for the Working Group's commitment, in its work, to protecting and promoting the rights of people of African descent. She emphasized the inextricable links and interdependence among the three themes of the International Decade for People of African Descent. Regarding the issue of recognition, she said that it was crucial to acknowledge the legacy of enslavement as well as the rich history and culture of people of African descent and Africans before enslavement. She added that the gap between laws to combat racial discrimination and the reality of structural discrimination, which impeded the delivery of justice, should be recognized.

5. She echoed the sentiments that the Working Group, together with the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Committee on the Elimination of Racial Discrimination, had expressed on the occasion of the International Day for the Elimination of Racial Discrimination — namely, that very little progress had been made in tackling racism, Afrophobia, racial discrimination, xenophobia and related intolerance, while there had been an alarming increase of hate speech across the globe. She added that the Sustainable Development Goals must incorporate the human rights principles of non-discrimination and equality. In the context of the International Decade, she called upon States to share information on initiatives taken at the national level to prioritize protection of the human rights of people of African descent. She expressed the hope that Member States would be soon taking steps to establish a forum for people of African descent. She conveyed the firm commitment of the High Commissioner for Human Rights to advancing the rights of people of African descent, including in his capacity as the Coordinator of the International Decade.

B. Election of the Chair-Rapporteur

6. Ricardo A. Sunga III was elected Chair-Rapporteur of the Working Group.

7. Ms. Fanon Mendes-France, in her statement as the outgoing Chair-Rapporteur, thanked the other members of the Working Group and the other meeting participants for their support and added that the Working Group would continue to strive to strengthen the mandate that had been entrusted to it. She highlighted the challenges faced in combating racism as a result of, inter alia, policies that had, in one way or another, contributed to the institutionalized invisibility and structural racism faced by people of African descent on a daily basis in all aspects of their lives. She urged the Working Group to systematically use the term "Afrophobia" to describe that particular form of racism. Emphasizing the importance of the first International Decade for People of African Descent, she expressed regret that the forum for people of African descent had yet to be established and that there had not been any discussion of the drafting of a United Nations declaration on the promotion and full respect of the human rights of people of African descent, even though the International Decade was already in its second year. She urged States to fully implement General Assembly resolution 69/16, on the programme of activities for the implementation of the International Decade.

8. Accepting his new role as Chair-Rapporteur of the Working Group, Mr. Sunga thanked the other experts for his election and the participants for their support.

9. The representatives of Brazil, Colombia, Egypt, Italy, Morocco, Namibia, South Africa, Tunisia and Venezuela (Bolivarian Republic of), along with the European Union, expressed appreciation to Ms. Fanon Mendes-France for her work during her tenure as Chair-Rapporteur and congratulated Mr. Sunga on his appointment as the new Chair-Rapporteur.

C. Organization of work

10. The Working Group adopted the agenda (A/HRC/WG.14/18/1 and Corr.1) and programme of work.

III. Update and briefings on activities undertaken by the Working Group in the past year

11. Under item 5 of the agenda, Mr. Sunga informed participants that the Working Group had submitted its annual report on its fifteenth and sixteenth sessions to the Human Rights Council at its thirtieth session. During that session the Working Group had also presented the reports on its country visits to the Netherlands and Sweden and had engaged in a constructive dialogue with Member States. The Working Group had also submitted its annual report to the General Assembly at its seventieth session and had participated in an interactive dialogue with the Third Committee on 2 November 2015.

12. Mr. Sunga also briefed the participants of the eighteenth session on the seventeenth session of the Working Group, an internal meeting at which members had reviewed the Working Group's methods of work, prepared for its upcoming session, communications and country visits, and held meetings with various stakeholders and representatives of various OHCHR units. The Working Group had decided to liaise more intensively with financial and developmental institutions during the following year in order to effectively implement the relevant parts of its mandate.

13. Mr. Sunga briefed participants on the country visits of the Working Group to Italy (1–5 June 2015) and the United States of America (19–29 January 2016). At the end of the visits, the Working Group had released press statements, which were available on the OHCHR website.[1] He thanked the Governments of Italy and the United States for their invitation and for their assistance before, during and after the visits. He also thanked the representatives of NGOs and the people of African descent with whom the Working Group had met during the visits and informed participants that reports of the missions would be submitted to the Human Rights Council at its thirty-third session and made publicly available on the OHCHR website.

14. The Working Group continued to actively promote and participate in activities to interact with civil society and assist stakeholders in the implementation of the programme of activities for the International Decade. Ms. Fanon Mendes-France had participated on behalf of the Working Group in the first regional conference of the International Decade, held in Brazil in November 2015. Also in 2015, Mr. Sunga had delivered statements and participated in a range of events, using those opportunities to raise awareness and call for the implementation of the Decade. Having devoted its three most recent annual sessions to the three themes of the International Decade, the Working Group had decided to devote the current session to studying the interlinkages between the three themes of the International Decade in order to further enhance understanding and awareness of the need to implement the International Decade.

IV. Summary of deliberations

Thematic analysis: development and people of African descent

15. The Working Group devoted its eighteenth session to the theme of "Interlinkages between recognition, justice and development".

16. The first panel discussion of the session focused on the interlinkages between the three themes of the International Decade for People of African Descent (recognition, justice and development). Danny Glover, an actor, producer and civil rights activist from the United States, delivered his statement through a videotaped message. He noted that the International Decade provided an important human rights and public policy framework for combating Afrophobia. He called upon national and multilateral policymakers to ensure that specific policies were targeted in support of people of African descent. He pointed out that mass incarceration and lack of access to education, employment, health care and political decision-making were characteristic of the treatment of people of African descent. He also emphasized the importance of reparatory justice in the context of the International Decade.

17. Ms. Fanon Mendes-France delivered a presentation titled "Interlinkages between the three themes of the International Decade for People of African Descent (recognition, justice and development)". She explained that as there was still limited awareness of the International Decade, the Working Group had decided to focus the session on the interlinkages between the three themes of the International Decade. The key question was to understand how to overcome the structurally and institutionally organized invisibility of people of African descent by analysing the interrelatedness of the three pillars, and how to develop responses in relation to the expectations of people who were daily victims of

[1] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16047&LangID=E and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17000&LangID=E.

racism and racial discrimination. She elaborated on each of the three themes and noted that they were very much related to the issues of identity, openness, diversity and the history of colonization and colonialism. She questioned the usefulness of a quantitative approach to measuring the extent to which racism affected people of African descent. She also highlighted the importance of recognition to ensure greater visibility for people of African descent and counter the stigma of Afrophobia, discrimination, xenophobia and exclusion. The struggle for social and political recognition, along with the fight for access to justice and the right to development, would structurally change the balance of power within a society, thereby ensuring respect for the rights of people of African descent and their dignity. Recognition was an essential move to counter the policies of stigmatization, xenophobia and exclusion, and to guarantee the right to the full enjoyment of all human rights by people of African descent in all parts of the world.

18. Angela Davis, a civil rights activist and scholar from the United States, delivered a videotaped message on the importance of the three themes of the International Decade. She said that people's collective relationship to history could not be confined to the past. She emphasized that any full recognition of the transatlantic trade in Africans and enslavement must also involve a broad consciousness of the persistence of racially inflicted violence, including in policing practices and prisons as well as in other sectors such as education, health care and housing, among others. She stressed that realization of equality and justice required major shifts in thinking about existing social, economic and political institutions. She appreciated the initiative taken by the Working Group in visiting the United States and the Working Group's advocacy of reparations for enslavement through the implementation of economic, educational and environmental rights.

19. Isabelle Boni-Claverie, an author, screenwriter and film director, presented her documentary *Too Black to Be French?*, in which she shared her personal experiences in order to highlight the plight of people of African descent and the discrimination they faced in French society. She pointed out that racism affected all people of African descent, irrespective of their social status. She emphasized the need to increase awareness about the International Decade and also the work and recommendations of the Working Group.

20. During the interactive dialogue, Mr. Balcerzak asked Ms. Fanon Mendes-France whether the issue of recognition for people of African descent in France had not been suppressed in the public discourse by more current issues of integration and migration. Ms. Fanon Mendes-France responded that owing to certain integration policies people were being pushed to abandon their identity, and that the key question was therefore how to ensure inclusiveness without denying the importance of where people came from. A representative of an NGO commented on the need to look at recognition from the perspective of the contributions of people of African descent prior to the history of enslavement.

21. The second panel discussion focused on the topic of "Recognition through national action plans and policies or regional plans". Mr. Reid gave a presentation on "Pedagogies of inclusion: a redefinition of curriculum for the recognition of people of African descent". He elaborated on the lingering impact of enslavement and colonialism on people of African descent. For over 400 years, millions of Africans had lost the basic human right to their legal identity, and thus remained invisible in legislation and policies. The cumulative result of racial inequality, systemic discrimination and invisibility constituted a debilitating challenge in many countries. Efforts by the world community to address the scourge of racism through the first World Conference against Racism and the Durban Review Conference, as well as the International Decade, represented the latest efforts to combat racism. He reminded Member States and members of civil society of the tremendous responsibility of ensuring that future generations would live in a world free of the scourges of Afrophobia, racial discrimination and their manifestations. He cited initiatives such as

development of national action plans and laws to promote knowledge of Africa, as well as recognition and appreciation of the identity, culture and history of people of African descent. He recommended the mandatory teaching of history that was culturally relevant and responsive to the experiences of people of African descent and cited the need for an Afrocentric pedagogy to ensure that future generations upheld the rights of people of African descent.

22. Alexandra Haas Paciuc, National Council for the Prevention of Discrimination, Mexico, delivered her message through a videotaped statement. She provided an overview of efforts made by the National Council to combat the racial discrimination faced by people of African descent in Mexico. She pointed out that, according to the 2015 census, 1.4 million people, or 1.2 per cent of the total population of the country, identified themselves as Afro-Mexicans. She outlined major aspects of Mexico's national plan of action for equality and non-discrimination for the period 2014–2018, which included 21 action items related to people of African descent, such as the establishment of a working group to monitor national compliance with the International Convention on the Elimination of All Forms of Racial Discrimination. The National Council also supported parliamentary processes for constitutional reforms, including through studies on the situation of Afro-Mexicans in the country. She pointed out the need to harmonize federal and state laws with respect to international human rights obligations, particularly in areas such as the right to food, education and access to justice, among others. A comprehensive agenda was necessary to promote the cultural traditions and historical contributions of Afro-Mexicans.

23. Pedro Mouratian, former head of the National Institute against Discrimination, Xenophobia and Racism, Argentina, also delivered a video message. He presented observations on addressing the situation of people of African descent from an Argentinian as well as a Latin American regional perspective. He said that it was essential to understand the root causes of the vulnerabilities faced by people of African descent, including the lack of information about communities of such people in the region, as well as the lack of information people of African descent themselves had in exercising their rights. In that regard they faced challenges in accessing health care, housing and work, to name a few examples. There was a need to develop indicators with measurable targets. The 2010 Argentinian census had helped in that regard as it had allowed people to indicate the ethnic group with which they identified. Sensitization campaigns were needed to revitalize the sense of identity of people of African descent, as the prevailing structural discrimination rendered them invisible. Their history and culture needed to be acknowledged, and he gave the example of how the Institute in collaboration with publishers had reviewed school textbooks to ensure that all text deemed to contain racist and xenophobic elements was removed.

24. During the interactive session, the representative of South Africa requested information from Mr. Reid on challenges in documenting and teaching history in its current context in the Caribbean region. Mr. Reid said that, while Caribbean historians had made progress in revisiting history to reflect the history of people of African descent, the repatriation of documents to the Caribbean region continued to present challenges. The representative of Ecuador shared that country's work to develop national policies and plans of action aimed at the most vulnerable groups in society, including people of African descent, and including the adoption of a national policy to implement the International Decade. The representative of Mexico described an initiative in that country involving the inclusion of the historical contributions of Afro-Mexicans in a chapter of history texts used in primary schools. The representative of South Africa described the work of the African Union on the issue, including the declaration of the African diaspora as its sixth region.

25. The third panel discussion focused on the topic "Justice: institutional racial bias and law enforcement". Mr. Sunga, in a paper entitled "Reflections on reparatory justice",

delved into the scope of justice in the context of institutional racial bias and bias in law enforcement. He said that, to address those forms of bias, regional and national laws must be adopted to create the possibility of restitution, compensation and satisfaction for those affected. Furthermore, the jurisdiction and competence of regional and domestic courts and tribunals must include the authority to grant various forms of reparatory justice. He recommended a number of measures in that regard, including laws defining and punishing racial profiling by police and other forms of state-sanctioned violence. At the same time, alternatives to imprisonment should be explored. He provided a number of examples of case law on justice and reparation. He concluded by saying that, in the context of the themes of the International Decade, there needed to be greater appreciation for the interconnections between justice on the one hand and recognition and development on the other.

26. Ralph Gonsalves, Prime Minister of Saint Vincent and the Grenadines, in his videotaped message said that the call by the Caribbean Community (CARICOM) for reparations concerned past enslavement. Describing the history of enslavement in his country, he said that enslavement had produced a legacy of underdevelopment in respect of education, health, housing and other sectors. He called on European nations to repair the legacy of underdevelopment caused by enslavement. CARICOM had set up a regional reparations commission, with individual countries setting up their own national reparations commissions. He also highlighted the objectives of the CARICOM Ten-Point Action Plan for reparations and the need to consolidate international support for reparatory justice.

27. Pastor Elías Murillo Martínez, a member of the Committee on the Elimination of Racial Discrimination, after mentioning the ongoing collaboration between the Committee and the Working Group, gave a presentation on racial profiling and its impact on people of African descent. He emphasized that there was a need to study in depth the manifestations and consequences of racial profiling and its disproportionate impact on people of African descent. Historical prejudice against people of African descent was the basis for present-day racial profiling, a practice that police guidelines often encouraged. Lack of training for enforcement officials could also lead to racial profiling, which eroded trust in public authorities, in particular law enforcement and the judiciary. Emphasizing the importance of data collection and analysis, he outlined a number of recommendations contained in a study conducted by the OHCHR Regional Office in Panama on racial profiling, including the adoption of measures criminalizing racial profiling, establishing sanctions for perpetrators of racial profiling and remedies for victims, conducting background checks of law enforcement officials, strengthening existing complaint mechanisms, providing relevant training to law enforcement officials and collecting data on racial profiling. Commenting on previous presentations, he said that reparation was essential for establishing equality before the law so that people of African descent could fully enjoy their rights. There was a link between the history of people of African descent and their current situation.

28. Ojeaku Nwabuzo, representing the European Network against Racism, presented a report on Afrophobia in Europe that her organization had compiled on the basis of a study of the impact of racism on people of African descent in 20 European Union countries (Austria, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Portugal, Spain, Sweden and the United Kingdom) primarily covering the period 2014–2015. The report discussed the most significant issues faced by people of African descent in many areas of their lives, such as education, health, housing, employment, criminal justice and public life. Key findings included the impact of national responses to the "migration crisis" and changes to migration and integration policies affecting people of African descent. The report concluded that the significant disadvantages and barriers erected through the prism of racism affected the life chances and outcomes of people of African descent. Political discourse was framed by political elites, and people of African descent were underrepresented in political life. The

report also discussed the prevalence of racist speech in social media and mainstream media and the disparate impact of racism on people of African descent in the labour, employment and housing sectors. The report contained recommendations for the adoption of a European Union framework for national strategies or policy objectives to combat Afrophobia and promote the inclusion of people of African descent, as well as for the collection of disaggregated equality data, with comparable data sets across Europe, in accordance with data protection standards.

29. Sara Mokuria, co-founder of Mothers against Police Brutality, United States, delivered a videotaped message on the excessive use of force by police officers in that country against people of African descent. She outlined a number of policy recommendations made by her organization, including, among others, conducting drug tests on police officers when they shot and killed, appointing special prosecutors for all shooting cases involving police officers, instituting federal oversight over the officer training curriculum concerning the use of deadly force and giving all family members full access to compensation for crime victims.

30. During the interactive session, Mr. Balcerzak asked Ms. Nwabuzo about the extent of the ongoing immigration crisis and its influence on people of African descent in Europe. He suggested including more information on people of African descent in Central and Eastern Europe. Ms. Nwabuzo replied that the political discourse was indeed creating an environment where racist speech was taking place with impunity, along with a focus on integration over anti-discrimination.

31. The fourth panel focused on the topic "Development: financial/developmental institutions and programmes for people of African descent". Mr. Balcerzak elaborated on practical steps the Working Group itself was planning to undertake to promote and support programmes and projects targeted at people of African descent in various areas related to development. Referring to the Working Group's mandate, which aimed at "contributing to the development programmes intended for people of African descent undertaken by international financial and development institutions, operational programmes and specialized agencies of the United Nations", he linked it to the programme of activities of the International Decade, which prioritized programmes and projects specifically tailored for people of African descent. He proposed studying the agendas of the international financial and development institutions with a view to identifying relevant programmes and issues; considering ways to be actively involved in the consultation process of development programmes intended for people of African descent, at both the planning and implementation stages; encouraging relevant development and financial institutions to take more interest in the Working Group's activities, including by participating in its public sessions; regularly reporting on its contribution to the development programmes; and considering ways to involve other relevant actors in the process of consulting on and contributing to the development programmes.

32. Veronica Womack, Chief Diversity Officer and Professor of Political Science and Public Administration at Georgia College & State University, United States, presented a paper on "Strategies for asset building and wealth creation for people of African descent within the Black Belt region of the American South". She gave an overview of socioeconomic conditions in the Black Belt region and the people of African descent living there, and of how the historical and present-day lack of asset building and wealth creation by people of African descent in the region had negatively affected their socioeconomic development. Examples of that included a disproportionate reliance on low-skill, low-wage jobs, high unemployment rates, low educational attainment, racial and class-based segregation of education and housing, geographical isolation from major transportation infrastructure, limited access to health care, substandard housing, reliance on non-elected, unrepresentative special district bodies in decisions about local economic development, and

a high concentration of power and wealth. She presented a number of recommendations regarding development strategies for people of African descent living in the Black Belt, in alignment with the Sustainable Development Goals for 2030, including providing entrepreneurship education, helping a new generation of farmers of African descent to acquire property in the region, building capacity and providing microfinancing for community-based organizations, among others.

33. Luis Alberto Moreno, President of the Inter-American Development Bank, said in his videotaped message that the International Decade represented an opportunity for recognition, justice and development for people of African descent, and for promoting their full inclusion in all aspects of society. He invited all Governments in the region, as well as entrepreneurs and civil society, to persevere together in that undertaking.

34. The presentations were followed by an interactive session during which Mr. Sunga asked the panellists to elaborate more on the linkages between development and justice. The representative of South Africa enquired about the Working Group's engagement with United Nations agencies working on development, such as the United Nations Conference on Trade and Development and the United Nations Educational, Scientific and Cultural Organization, in addition to engagement in the framework of the 2030 Agenda for Sustainable Development. Mr. Balcerzak replied that the Working Group had just began its work with financial and development institutions and would take into account the suggestions made.

35. A special panel discussion was held to commemorate the fifteenth anniversary of the Durban Declaration and Programme of Action and the implementation of the International Decade for People of African Descent. Mary Robinson, former United Nations High Commissioner for Human Rights and Secretary-General of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, of which the Durban Declaration had been an outcome, delivered her statement through a videotaped message. Ms. Robinson said that one of the positive outcomes of the World Conference against Racism had been the establishment of the Working Group in 2002 by the Human Rights Commission. She congratulated the Working Group on its valuable reports over the years and drew its attention to the issue of attacks against refugees, asylum seekers and migrants arriving in Europe, as well as the racist language increasingly being used by some political parties in Europe. She added that hate speech, rooted in hostility to ethnic, religious and cultural diversity, was being used not only by extremist groups but also by politicians from across the political spectrum, and in social media. She hoped that the Working Group would use its voice to reassert the values and principles of tolerance, equality and non-discrimination, with particular emphasis on awareness-raising and other educational initiatives aimed at countering racist messages and promoting mutual understanding.

36. Hilary Beckles, Vice-Chancellor of the University of the West Indies and Chair of the CARICOM Reparations Commission, delivered a videotaped statement in which he said that the International Decade was an opportunity to ensure that strategies to alleviate the harm and suffering long imposed on people of African descent were long-term and sustainable. While such people were still confronting the legacy of the past in areas such as economic distribution of wealth, hostilities by police authorities and harsh judicial punishment, as well as access to education, health care and housing, the reparatory justice movement was gaining momentum with the establishment of national commissions for reparations in several countries. The movement was not simply about the empowerment of people of African descent in respect of the history they had experienced, but also about finding a new philosophy for the organization of societies and the world in order to establish social justice, moral authority and peace within the human family.

37. The Regional Coordinators also participated in the panel discussion. The representative of the European Union described how developments in the European Union

contributed to the global objectives set out in the Durban Declaration and Programme of Action as well as in the International Decade's objectives and programme of activities. In particular, since the European Union Charter of Fundamental Rights and Freedoms, which prohibited discrimination, had become legally binding, landmark legislation to combat racism and xenophobic speech and crimes had been adopted in 2008 and was now applicable in all European Union member States. It required the member States to criminalize intentional public incitement to violence or hatred as well as the denial, condoning and gross trivialization of certain international crimes, such as genocide, when such conduct was directed at persons defined by reference to race, colour, religion, descent or national or ethnic origin. Several Directives, such as the Racial Equality Directive and the Employment Equality Directive, provided further legal guidance on specific issues. World events such as the global economic crisis, the European and global refugee and migration crisis and the rise of extremism had created new tensions, fuelled new fears and in some cases increased existing intolerance. For those reasons countries could not afford to be complacent and must continue to work together as a global community to fight racism and xenophobia.

38. The representative of Uruguay, speaking on behalf of the Latin American and Caribbean Group, expressed the commitment of the countries of the region to the Durban Declaration and Programme of Action and the fight against racial discrimination. The countries were similarly committed to implementing the programme of activities of the International Decade, and some countries had already implemented national plans of action in that regard. He drew attention to the first regional meeting under the International Decade, which had been held in Brazil in December 2015.

39. The representative of South Africa, speaking on behalf of the African Group, said that the time was opportune for the United Nations system to develop a normative framework addressing the promotion and protection of the rights of people of African descent. The African Group was concerned that people of African descent in the diaspora continued to suffer multiple forms of racism and racial discrimination. Many remained socially excluded and economically marginalized and lived in conditions of abject poverty and underdevelopment, as racism had become rather "institutional" in nature, a fact reflected in many decrees and laws that targeted certain segments of society. The African Group was of the view that true development of societies could be achieved without promoting justice and tolerance and combating racism in its diverse forms. He called for the finalization of a normative framework on people of African descent in the context of the International Decade and wished to see further discussions on the establishment of a forum for people of African descent.

40. The representative of the United States emphasized that country's commitment to combating racism, saying that the United States saw the International Decade as an excellent opportunity to discuss civil rights issues. He referred to the "My Brother's Keeper" initiative, which provided boys and young men of colour with mentoring and skills development in order to eliminate the opportunity gaps they faced in the United States. He described recent collaborative efforts with Brazil, Panama, Peru and Uruguay to address racial discrimination.

41. The representative of Brazil said that the Durban Declaration and Programme of Action had become the major reference point in the design and implementation of public policies for fighting racism and promoting social inclusion. Drawing on the Durban Declaration and Programme of Action, in 2003 Brazil had established the Secretariat for Policies for the Protection of Racial Equality, tasked with to reforming and overseeing the national institutional framework for implementing public policies for combating racism and racial discrimination. He cited several legislative reforms and the first regional conference under the International Decade, held in Brasilia in 2015, and reaffirmed his country's

commitment to the creation of a forum for people of African descent, the adoption of a United Nations declaration on the rights of people of African descent and the convening of the fourth World Conference against Racism.

42. Ms. Fanon Mendes-France in her statement emphasized the need to take stock of the work done in the past 15 years to combat racism, racial discrimination, xenophobia, Afrophobia and related intolerance. She questioned the idea of universality and argued that the domination of European views, as well as globalization, resulting in resistance to the applicability of the principle of universality in the realization of rights by all. She underscored the importance of the Durban Declaration and its Programme of Action, as well as its interlinkages with the work of the Working Group in the context of the International Decade. She said that addressing the legacies of the past, including the commodification of people of African descent and its continuing impact on the African continent, was a huge undertaking. She highlighted the importance of just reparations and suggested that archives on the slave trade, enslavement, colonization and colonialism be opened. She said that the Durban Declaration and Programme of Action and the International Decade served as guides for combating racism, racial discrimination, xenophobia and Afrophobia, for making societies truly pluralistic and rights truly universal for all.

43. The sixth panel discussion focused on the topic of combating racial stereotyping. Ms. Fanon Mendes-France gave an overview of the Working Group's efforts to examine stereotypes faced by people of African descent. They included the study of the role of the Black figure in public space, including the role of the Swarte Piet (Black Pete) character in the Sinterklaas festival in the Netherlands, before and after the visit of the Working Group to the Netherlands in 2014, as well as the study of the prevalence of such stereotypes in different parts of the world. She presented highlights of a paper by Verene Shepherd, former member of the Working Group, on the Black Pete tradition in the Netherlands, including its origins and the ongoing debate surrounding it. Mr. Sunga spoke about the prevalence of racial stereotypes in the Asian region, giving a number of examples from the media and advertisements. The stereotypes could be explained partly by a lack of recognition of people of African descent who had arrived in the region through the slave trade or through various forms of migration and an absence of any acknowledgement of African contributions to Asian society. Mr. Balcerzak spoke about the stereotyping of people of African descent in Central and Eastern Europe. He said that stereotypes were the result of limited knowledge, misinterpretations, a lack of education, and the portrayal of people of African descent in the media, and provided examples from Poland. Ms. Fanon Mendes-France gave several examples of stereotypes in Western art, saying that on the rare occasions when people of African descent appeared in movies they had secondary roles.

44. Hossam Adly, Project Officer for cultural diversity at the City of Geneva, described how that city countered discrimination by holding a Week against Racism, event in March of each year, as well as by promoting diversity through public policy. The city had a diverse population because of its large foreign labour force, and discriminatory acts and statements could be encountered in various areas, particularly in the labour and housing sectors and in interactions with the police. He highlighted the prevalence of xenophobia and racism directed at people of African descent and Muslims. He described Geneva's policy on diversity, which included measures to combat prejudice, intolerance, racism, xenophobia, and discrimination based on religion or ethnic or cultural affiliation. He also listed the various Week against Racism events, including awareness-raising activities and workshops.

45. Kanyana Mutombo of CRAN (Platform for Reflection and Action against Anti-Black Racism), an NGO based in Switzerland, described the activities of the organization, including those aimed at raising awareness about racial discrimination and stereotypes

faced by people of African descent in Switzerland. People of African descent were often stereotyped as being drug dealers and were subject to racial profiling and detention by law enforcement officials because of their background. They were sometimes depicted negatively in the media and in advertisements. Despite their historical contributions, they were relatively invisible.

46. Barryl Biekman of the Dutch NGO Tiye International presented a conceptual framework for an analysis of the Sinterklaas tradition, in particular the figure of Black Pete, and subsequent developments in the country in relation to the practice. She expressed concern at the slow pace of the implementation of the programme of activities of the International Decade, and of combating racial discrimination in general. She said that more work was necessary to combat Afrophobia and suggested that such work focus on developing consensus regarding the conceptual framework for understanding the phenomenon.

47. Participants were also shown a videotaped presentation by the Collective against Islamophobia in France on the topic "Islamophobia: intersectionality of discrimination". According to the presentation, Muslim people of African descent and females from humble social backgrounds were among the most affected by discrimination. The presentation gave examples of how people were discriminated against in, for example, interactions with law enforcement officials. It was recommended that concrete work be initiated on multiple forms of discrimination and on their intersectionality.

V. Conclusions and recommendations

48. **The Working Group concluded its eighteenth session on the theme of "Interlinkages between recognition, justice and development" and made the following conclusions and recommendations.**

49. **The Working Group recorded its appreciation to the United Nations Deputy High Commissioner for Human Rights for her intervention at the eighteenth session. It also thanked Member States and representatives of international organizations and civil society for their active participation.**

A. Conclusions

50. **The Working Group concludes that the promotion and protection of the human rights of people of African descent should be a matter of prioritized concern for States. The interlinkages, interrelationship and interdependence between the three pillars of the International Decade for People of African Descent (recognition, justice and development) are inextricable, and the programme of activities of the International Decade should be seen as a whole and no parts of it neglected or minimized.**

51. **The Working Group welcomes the achievements of the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, including the Durban Declaration and Programme of Action and the political consensus reached on the programme of activities for the implementation of the International Decade. Together, these documents recognize that people of African descent have for centuries been victims of racism and racial discrimination, and provide a strong framework for combating racism, racial discrimination, xenophobia, Afrophobia and related intolerance faced by people of African descent.**

52. Colonial history, the legacies of enslavement, racial subordination and segregation, and policies on race remain a serious challenge in many countries. They strengthened a view of the world that did not consider the perspectives of Africans and people of African descent. Stereotyping is a disturbing phenomenon worldwide. An Afro-centric perspective would pave the way to a more informed world view.

53. The systemic discrimination and the construction of structural and institutional invisibility faced by people of African descent stem from the fact that their history and their contributions to the development of civilization are not properly documented, and are at times rewritten, falsified and not made known to all. The administration of justice is an important way of eliciting the truth. Furthermore, for the full development of people of African descent, there must be recognition, justice and development.

54. Justice includes the totality of reparations, incorporating elements of restitution, compensation and satisfaction. In this light, the Ten-Point Action Plan CARICOM is seen by the Working Group as a creative way of weaving together different elements of reparatory justice. Apology, repatriation, indigenous people's development, cultural institutions such as museums and research centres, public health initiatives, literacy, African knowledge programmes, technology transfer and debt cancellation, are among the points raised in this action plan.

55. The Working Group welcomes some States' and civil society's positive response to its plans aimed at looking into the programmes and policies of financial and development institutions from the perspective of people of African descent. The Working Group will take into consideration the 2030 Agenda for Sustainable Development. In this regard, the Working Group will focus on the areas referred to in its mandate – investments in health systems, education, housing, electricity, drinking water and environmental control measures and promoting equal opportunities in employment – as well as other affirmative or positive measures and strategies within the human rights framework.

56. The Working Group stresses that there is a clear connection between poverty and racism. In countries that have a history of transatlantic trade in Africans, the demographic structure is such that the poorest population group is disproportionately composed of people of African descent. Faced with structural discrimination and invisibility, people of African descent encounter an uphill battle in claiming their rights, thus perpetuating multigenerational poverty.

57. The Working Group is deeply concerned by the alarming rates of police violence and the use of racial profiling by law enforcement agencies. People of African descent are disproportionately victims of such acts and are also denied justice.

58. The Working Group expresses its deep concern over the rise in xenophobia and attacks against refugees, asylum seekers and migrants, and over the racist language increasingly being used about them by some political parties. Hate speech is being used not only by extremist groups but also by politicians from across the political spectrum and in social media.

59. Sixty years after the anti-colonialist movements led to the independence of some countries, colonial-based educational materials and perspectives continue to negatively influence society. Many textbooks and reference works still contain racial biases and sexism and fail to consider Afrocentric perspectives. Many of these colonial-based educational materials reinforce negative and damaging stereotypes about people of African descent.

60. The Working Group recognizes that some States have launched the International Decade and have taken steps to add chapters on African history and the transatlantic trade in Africans to primary-level textbooks. While the Working Group welcomes examples of good practices, there is a pressing need to intensify efforts in order to ensure that all States and regions are involved in the full implementation of the programme of activities of the International Decade for People of African Descent, including the provisions of General Assembly resolution 69/16 calling for the establishment of a forum and the drafting of a United Nations declaration on the promotion and full respect of the human rights of people of African descent.

61. The Working Group affirms the important contribution of civil society to its work, in the Durban process and in the promotion and implementation of the International Decade. The Working Group expresses its appreciation for civil-society initiatives that have been productive and have enriched the dialogue on the rights of people of African descent.

B. Recommendations

62. The Working Group reiterates its recommendations made to States, civil society and United Nations agencies, funds and programmes in its previous sessions related to the three pillars of the International Decade. The Working Group also calls for the implementation of the Durban Declaration and Programme of Action.

63. The Working Group recommends that States and civil society review national constitutions and laws and their compatibility with international human rights law, specifically in relation to combating racial discrimination and Afrophobia against people of African descent.

64. The Working Group urges States to, where appropriate, actively pursue reparatory justice for people of African descent. The Working Group also encourages States and regional organizations to undertake initiatives to address recognition, justice and development for people of African descent, as does the CARICOM Ten-Point Action Plan on reparations.

65. The Working Group recommends the setting up of national observatories on racial profiling to identify and document violations. The Working Group requests that States design, implement and enforce, in partnership with people of African descent, measures to eliminate racism, racial discrimination, xenophobia, Afrophobia and related intolerance.

66. The Working Group recommends that States collect and analyse disaggregated data on people of African descent, on the basis of the principle of self-identification, particularly in places where such disaggregated data are unavailable.

67. The Working Group calls upon States to fund and support, at the national level, programmes for the International Decade. At the international level, the Working Group calls upon States to contribute without further delay to the Trust Fund for the Programme for the Decade for Action to Combat Racism and Racial Discrimination. The Working Group calls upon States to fund civil-society activities in the context of the International Decade and the participation of civil society in Working Group sessions.

68. The Working Group urges States to reach a consensus on the establishment of a forum for people of African descent without any further delay at the thirty-second session of the Human Rights Council.

69. **The Working Group encourages development agencies and financial institutions to develop and implement programmes to address the human rights situation of people of African descent. The Working Group endorses, and recommends to development agencies and financial institutions for their serious consideration, the CARICOM Ten-Point Action Plan on reparations, including its points on public health initiatives, rehabilitation, technology transfer and debt cancellation.**

70. **The Working Group encourage States, civil society and other relevant actors to actively oppose negative stereotyping of people of African descent on the basis of ethnicity, religion and origin, with a specific focus on hate speech and incitement to hatred through media and political statements. The Working Group suggests the adoption of measures to prohibit and sanction the use of negative stereotyping. Furthermore, positive steps should be taken to create a space for the African perspective, one that will enable a more informed view.**

71. **States are called upon to promote full and accurate inclusion of the general history of Africa and to recognize in educational curricula the important contribution of people of African descent.**

72. **States are urged to develop comprehensive national action plans for tackling racism, racial discrimination, xenophobia, Afrophobia and related intolerance, including by reinforcing national institutions, legislation and the administration of justice, as well as by creating competent national bodies to tackle racial discrimination against people of African descent in all its manifestations.**

Annex

List of participants at the eighteenth session

A. Members of the Working Group

Mr. Michal Balcerzak

Ms. Mireille Fanon Mendes-France

Mr. Ahmed Reid

Mr. Ricardo A. Sunga III

B. Member States

Algeria, Argentina, Austria, Belgium, Botswana, Brazil, Burundi, China, Colombia, Czech Republic, Dominican Republic, Ecuador, Egypt, Finland, Germany, Ghana, Greece, Haiti, Indonesia, Italy, Jamaica, Japan, Kenya, Liberia, Libyan Arab Jamahiriya, Mauritius, Mexico, Morocco, Namibia, Netherlands, Nigeria, Panama, Russian Federation, South Africa, Spain, Sweden, Tunisia, United Kingdom of Great Britain and Northern Ireland, Uruguay, Venezuela (Bolivarian Republic of), Zimbabwe.

C. Non-member States

Holy See.

D. Intergovernmental organizations

African Union, European Union.

E. Non-governmental organizations in consultative status with the Economic and Social Council

African Commission of Health and Human Rights Promoters (CAPSDH), Coordination of African NGO on Human Rights (CONGAF), International Youth and Student Movement for the United Nations (ISMUN), National Platform Dutch Slavery Past-LPS, Rencontre Africaine pour la Defense des Droits de l'Homme (RADDHO), Tiye International.

F. Non-governmental organizations not in consultative status with the Economic and Social Council

Association K-Neter Kemet, Black Mental Health UK, Culture of Afro-Indigenous Solidarity, Espace Afrique International, European Network against Racism (ENAR), Platform for Reflection and Action against Anti-Black Racism (CRAN Suisse), World Against Racism Network (WARN).

G. Panellists and presenters

Mr. Hossam Adly, Ville de Geneve;

Prof. Hilary Beckles, Vice-Chancellor, University of West Indies;

Dr. Barryl Bickman, Tiye International;

The Collective Against Islamophobia in France (CCIF);

Platform for reflection and Action against Anti Black Racism (CRAN Suisse);

Ms. Isabelle Boni-Claverie, France;

Ms. Angela Davis, USA;

Mr. Danny Glover, USA;

H.E. Dr. Ralph Gonsalves Prime Minister of Saint Vincent and Grenadines;

Mr. Pastor Elias Murillo Martinez, Member, Committee on the Elimination of Racial Discrimination (CERD);

Ms. Sara Mokuria, Mothers Against Police Brutality, USA;

Mr. Luis Alberto Moreno, President, Inter-American Development Bank;

Mr. Pedro Mouratian, former Head of the National Institute against Discrimination, Xenophobia and Racism (INADI), Argentina;

Ms. Ojeaku Nwabuzo, European Network Against Racism (ENAR);

Ms. Alexandra Haas Paciuc, The National Council for the Prevention of Discrimination (CONAPRED), Mexico;

Mrs. Mary Robinson, Former U.N. High Commissioner for Human Rights and Secretary General of the World Conference Against Racism;

Prof. Veronica Womack, Georgia College & State University, USA.

United Nations

A/HRC/33/61/Add.1

General Assembly

Distr.: General
12 August 2016

Original: English

Human Rights Council
Thirty-third session
Agenda item 9
Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Report of the Working Group of Experts on People of African Descent on its mission to Italy

Note by the Secretariat

The report transmitted herewith contains the findings of the Working Group of Experts on People of African Descent on its visit to Italy, from 1 to 5 June 2015. In it, the Working Group presents the current legal, institutional and policy framework, as well as the measures taken to prevent racism, racial discrimination, xenophobia and Afrophobia and protect the human rights of people of African descent in Italy, underscoring positive developments and some gaps in implementation. The Working Group describes the situation, highlights good practices and the main challenges identified, and makes concrete recommendations.

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Report of the Working Group of Experts on People of African Descent on its mission to Italy*

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* Circulated in the language of submission only

I. Introduction

1. At the invitation of the Government of Italy, the Working Group of Experts on People of African Descent undertook a visit to Italy from 1 to 5 June 2015. The members of the delegation were Mireille Fanon Mendes-France, Ricardo Sunga III and Michal Balcerzak.

2. The Working Group thanks the Government of Italy for its invitation to visit the country and for its cooperation. It thanks the Ministry of Foreign Affairs and International Cooperation, the Interministerial Committee on Human Rights and the local authorities in Milan and Catania, in particular, for their support. It would also like to thank Cécile Kyenge for her collaboration. The Working Group regrets not having been able to meet high-level representatives of the Government.

3. The Working Group met with: representatives of several government departments and offices, including the Interministerial Committee for Human Rights, the Ministry of Foreign Affairs and International Cooperation, the Ministry of Justice, the Ministry of Public Health, the Ministry of Labour and Social Policies, the Ministry of Education, University and Research, the Guardia di Finanza and the National Office against Discrimination; representatives of the Prefecture of Milan and of the Prefecture of Catania; African activists and activists of African descent, lawyers and academics; and representatives of civil society, the Office of the United Nations High Commissioner for Refugees and the Italian Red Cross. During the visit, the Working Group visited Rome, Milan and Catania. It also visited a centre for Sudanese refugees in Rome, witnessed the reception of new arrivals at the port of Catania, in Sicily, and visited the reception centre for asylum seekers and refugees in Mineo, near Catania. The Working Group would like to thank all those it met with and all those who shared their views on the human rights situation of people of African descent in the country.

4. During the visit, the Working Group assessed the situation of people of African descent living in Italy, including recent refugees and migrants from Africa, and gathered information on the forms of racism, racial discrimination, xenophobia, Afrophobia and related intolerance that they face. It studied the official measures and mechanisms taken to prevent racial discrimination and protect victims of racism and hate crimes, as well as responses to multiple forms of discrimination. During the visit, the Working Group focused both on good practices and on the challenges faced in realizing the fundamental rights od people of African descent.

II. Background

A. Brief history of people of African descent in Italy

5. The history of people of African descent in Italy can be traced to the early Renaissance period. Prior to unification in 1861, Italian city states were involved in the trade in enslaved Africans. Bartolomeo Marchionni, a Florentine merchant and banker, emerged during the late fifteenth century as one of the biggest slave traders. During the 1490s, in fact, he had a monopoly on the trade in enslaved Africans from the Benin River.

6. Sub-Saharan Africans appeared in northern Italian records as early as in the mid-fourteenth century. Until the mid-fifteenth century, Italian merchants from the northern part of the peninsula acquired enslaved Africans mainly from Muslim merchants. Enslaved Africans were present in southern Italy much earlier, owing in part to the commercial and political relations between Sicily and the Kingdom of Aragon and to the proximity of the island to the markets of North Africa. It is estimated that Africans in Sicily accounted for

half of the servile population in the sixteenth century. Their numbers decreased sharply thereafter, as slave traders directed their supplies of captive Africans increasingly to the colonies in the Western hemisphere. To replace that source of slaves, traders in Sicily turned to Muslims from the Maghreb. Wherever in Italy Africans were for sale, their prices fell significantly below those of lighter-skinned slaves, which suggests that they were not as in demand as slaves from Central Asia or Eastern Europe and reinforces the impression of previous historians that Italians were prejudiced against dark-skinned people. The scarcity of Africans in Italian cities undoubtedly reinforced the exotic quality that some contemporary Italians attributed to them. Isabella d'Este and members of her family are among the best-known fifteenth-century patrons who avidly sought but had to make considerable efforts to find captive African children to add to their collection of enslaved servants, retainers and "objects" of curiosity. In part because they never constituted more than a very small proportion of the enslaved populations in the city states of Italy, rationales for their subjugation on the basis of skin pigmentation did not take hold as they had in Spain and Portugal.[1]

7. It is reported that the creation of black confraternities in Naples, Palermo and Messina was the result of the activity of different religious orders among enslaved persons and freedmen. The access of Africans (enslaved and freed) to the sacraments of penance, communion and marriage is well documented, while the ordination of African priests was very rare — one Ethiopian and one Congolese bishop, suggested by the Portuguese king in 1513, were exceptional cases.[2]

8. In 1937, the Second Italo-Ethiopian War led to the first Fascist laws promoting explicit racial discrimination. These were the laws against *madamato* — that is, the concubinage between Italian men and African women in colonized territories. At the same time, a campaign against the putative dangers of miscegenation started in Italy. The Church endorsed laws stating that "hybrid unions" had to be forbidden because of "the wise, hygienic and socially moral reasons intended by the State": the "inconvenience of a marriage between a White and a Negro" and the "increasing moral deficiencies in the character of the children".[3]

9. In the late 1930s, Benito Mussolini became a major ally of Nazi Germany. The influence of Nazi ideology on Italian Fascism could be seen in a press release by Mussolini dated 16 February 1938; Fascism then assumed an overtly racist stance in the "Manifesto of race", originally published on 14 July 1938 as "Fascism and the problems of race", in *Il Giornale d'Italia*.

10. Since the 1960s, there has been immigration to Italy from the former colonies in Africa, with relatively large numbers of people arriving from Eritrea, Ethiopia and Somalia.

11. Since the 1980s, owing largely to its geographic position, Italy has been a prime destination for migrants and refugees arriving by boat, especially from North Africa but also from sub-Saharan Africa. In the 1990s, in particular, the number of migrants from Africa was far larger than that from other continents.

[1] Sally McKee, "Domestic slavery in Renaissance Italy", *Slavery and Abolition*, vol. 29, No. 3 (2008).

[2] T.F. Earle and K.J.P. Lowe, eds., *Black Africans in Renaissance Europe* (Cambridge University Press, 2005).

[3] Sergio Luzzatto, "Pio XI e quel razzismo d'Africa", *Corriere della Sera*, 5 November 2008.

B. Current ethnic, demographic and political situation

12. Italy does not collect disaggregated data on the ethnic composition of its population, which makes it difficult to see and analyse the scale of the violations faced by people of African descent and for the Government and other stakeholders to take targeted action to address gaps in the protection of their human rights. The only official information available is on numbers of immigrants or foreign residents from African countries.

13. According to official statistics collected and analysed by the National Institute of Statistics (ISTAT) and the National Office against Discrimination and reported in the statistical dossier on immigration released in 2015, Italy is one of the main countries of immigration in Europe, with 5,014,000 foreign residents at the end of 2014 (99,000 more than in 2013), whereas the number of Italian citizens residing abroad was 4,637,000 (150,000 more than in 2013). The incidence on the Italian population (8.1 per cent) continues to be higher than the European average. Moreover, the total foreign presence in the country was estimated at 5,421,000 people, including non-European Union residents awaiting registration.

14. In 2014, 129,887 foreign nationals obtained Italian citizenship (an increase of 29 per cent compared with 2013, when a strong increase compared to the previous year had already been recorded). Mixed marriages slightly decreased (18,273 or 9.4 per cent of the 194,097 marriages registered in 2013), whereas marriages between foreign nationals were 3.8 per cent of the total (7,807 marriages).

15. The number of children born in Italy in 2014 from foreign-born parents remained almost stable (75,067, i.e. 14.9 per cent of the total number of births). Of the more than 1.1 million foreign minors, 814,187 were enrolled in school during the academic year 2014/15, that is 11,343 more than in 2013 (the highest increase, of more than 8.4 per cent, was recorded among minors born in Italy), whereas the number of Italian students continued to decrease (8,886,076, equal to a decrease of 0.6 per cent).

16. According to official statistics, cases of ethnic and racial discrimination persist. Of 1,193 complaints received by the National Office against Discrimination during 2014, some 990 were considered relevant. The mass media are reportedly those mainly responsible for such discrimination, with 291 confirmed cases (29.4 per cent of the total).

17. According to ISTAT data, the number of non-nationals residing in Italy on 1 January 2016 was around 5,054,000 (8.3 per cent of the population). The net international migration was of 128,000 units (273,000 immigrations against 145,000 emigrations), representing a rate of 2.1 per thousand inhabitants, which is equal to a quarter of the total recorded in 2007, a record year for international migration. Some 245,000 non-nationals were registered and some 28,000 Italians were repatriated. In addition, some 45,000 non-nationals and some 100,000 Italians emigrated. For the first time in 12 years, there were fewer than 1,300,000 changes in residence within the national borders, representing a decrease of 3 per cent compared with 2014.

18. On the basis of 2011 data, the European Network against Racism has estimated that there are some 350,000 people of African descent in Italy (residents of Italy who are citizens of a sub-Saharan African country).

19. Many migrants and refugees from Africa cross the Mediterranean Sea to Italy by boat. Once in Italy, asylum seekers are often unable to leave, as they are required by the Dublin regulations to stay in the country of first arrival in the European Union for processing.

20. Italy has a long history of emigration: an estimated 24 million Italians emigrated between 1876 and 1976.

III. Framework and steps taken to protect the human rights of people of African descent

A. Legal framework

21. The Working Group welcomes the steps taken by the Government to begin to address Afrophobia and racial discrimination against people of African descent in the country.

22. Italy has ratified international and European human rights instruments prohibiting racial discrimination, including the International Convention on the Elimination of All Forms of Racial Discrimination.

23. Its Constitution guarantees fundamental rights and freedoms and its laws prohibit discrimination on a number of grounds. The Italian legal system aims to ensure an effective framework to guarantee the fundamental rights of individuals, providing them with a range of provisions that have, at their core, the principle of non-discrimination, as set out in article 3 of the Constitution: "All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions". In addition to establishing the autonomous principle of so-called "substantial" equality and equal opportunities for all citizens in social, economic and political life, the Constitution expresses a rule of interpretation to be reflected in the implementation of the principle of so-called "formal" equality. Paragraph 2 of article 3 describes the guarantee of non-discrimination vis-à-vis the results produced or to be produced in concrete life relations, thanks to the primary constitutional imperative of removing the obstacles limiting the equality of citizens and pursuing the ultimate goal of the full development of the individual and effective participation in community life.

24. Italy has strong anti-discrimination legislation. Even more comprehensive legislation was adopted in 2003, when Italy incorporated into national law Council of the European Union directives No. 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and No. 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

25. The legal framework includes a range of criminal, civil and administrative provisions to combat racism and incitement to racial hatred, which is severely punished by the Criminal Code, in particular by Act No. 205 of 25 June 1993 (commonly referred to as the "Mancino Law"), as modified by Act No. 85 of 24 February 2006.

26. Article 3 of the Mancino Law allows judges to increase a sentence by up to one half if it was committed "with the purpose of discrimination or hatred based on ethnicity, nationality, race or religion, or in order to facilitate the activity of organizations, associations, movements or groups that have this purpose among their objectives".

27. The Mancino Law provides for ex officio investigations — even when the victim has not filed a formal complaint — into crimes committed within the meaning of its article 3.

28. Under standard Italian criminal procedure, the seriousness of the personal injury determines the extent of the State's obligation to investigate and prosecute. In the Italian criminal framework, personal injury is prosecuted ex officio, apart from the victim, if it has caused mental or physical harm requiring care for more than 20 days; voluntary personal injury causing less harm, excluding permanent damage or other aggravating circumstances (see arts. 583 and 585 of the Criminal Code), is prosecuted upon the request of the victim. The Mancino Law also makes it a crime to "instigate in any way or commit violence or acts of provocation to violence for racist, ethnic, national or religious motives", punishable by

between six months and four years of imprisonment, and to "propagate ideas based on racial superiority or racial or ethnic hatred, or to instigate to commit or commit acts of discrimination for racial, ethnic, national or religious motives".

29. The Government has emphasized that it is committed to eradicating racist and xenophobic attitudes and implementing these laws. For instance, the mayor of Verona was convicted for promoting racist ideas and the deputy mayor of Treviso was convicted for incitement to racial hatred.

30. Italian legislation (Legislative Decree No. 215/2003) aims to ensure non-discrimination and equality for all individuals regardless of their racial or ethnic origin (art.1) and allows for civil action to be taken for discriminatory acts committed by members of the public administration on the grounds of race and ethnicity or religion (arts. 4 and 5) and nationality (see Legislative Decree No. 286/1998 governing immigration and the status of foreign nationals, art.44).

31. A new law gives undocumented migrants access to hospitals for emergency health care and education without risk of being reported to the authorities.

B. Institutional and policy measures

32. During its visit, the Working Group was informed about a number of recent initiatives to address racism, including Afrophobia, in the country. It was told that a national action plan against racism and xenophobia had been developed and would soon be launched. It was also informed of plans to implement a programme of activities for the International Decade for People of African Descent (2015-2024), the theme for which is "Recognition, justice and development".

33. The national action plan against racism, xenophobia and related intolerance was reportedly adopted formally in September 2015. The plan is aimed at implementing a comprehensive strategy to support national and local policies to ensure the full respect of the equality principle and to counter discrimination, racism, xenophobia and related intolerance, in accordance with international and European law. The plan will make use of data collected over time to monitor discriminatory phenomena in key areas and address cases limiting access to basic services (education, health and labour), in both the public and the private sectors.

34. Since 2013, the National Office against Discrimination has been responsible for protecting individuals against all forms of discrimination, whether based on race, ethnic origin, religion, personal opinion, disability, age, sexual orientation or gender identity. The Working Group learned that the Office had carried out a number of initiatives to raise awareness of and promote action to eliminate discrimination and inequality. The Office works closely with the Observatory for Protection against Acts of Discrimination to encourage the reporting of hate crimes and ensure the right to non-discrimination and equality. There are also plans to establish a national working group on interactive dialogue between the Government and religious institutions.

35. The Working Group recognizes the efforts made by Italy in relation to the migrant crisis and, in particular, the increase in search-and-rescue operations recently carried out, which has saved thousands of lives. During the week it was in Catania, the Working Group was informed that around 4,000 people had arrived in Sicily. In the context of the economic crisis, the humanitarian response is particularly commendable. The Working Group believes that finding effective long-term solutions depends on action and solidarity at the European and international levels. The gravity of the situation demands that urgent steps be taken, in particular by the European Union and its member States, to implement the Council of the European Union agreement of September 2015 on relocation and resettlement quotas

for approximately 160,000 migrants and refugees from Italy and Greece, in line with the principle of solidarity shared by all European countries.[4] The situation also calls for the international community to take action and put in place policies of development that are in accordance with the framework of the right to development and the Sustainable Development Goals in order to avoid young people having to leave African countries because of extreme poverty.

36. The Working Group notes the recent efforts made, including the handbook for integration published by the Ministry of Labour and Social Policies and the "Direct contact with second generations" campaign, as well as the initiatives by the Ministry of Education to increase the inclusion of foreign students in the Italian school system. Despite these efforts, however, racial discrimination, Afrophobia and racism persists and people of African descent continue to be the least integrated, most marginalized victims of racial profiling. The Working Group regrets that the texts are not followed by adequate implementation.

37. The Working Group welcomes civil society's initiatives to encourage inclusive relations through the promotion of intercultural and interreligious understanding, taking into account the many ways in which the human rights violations experienced by people of African descent intersect. It commends the work done by volunteers and organizations to both assist new arrivals and to promote and protect the human rights of people of African descent. The Working Group is concerned by the lack of State funding for such organizations and by the lack of reparations available to persons of African descent, migrants and asylum seekers faced with Afrophobia, racism, hate speech and violence, including police violence, racial profiling and stigmatization.

IV. Manifestations of racial discrimination, xenophobia and Afrophobia

A. Racially motivated crimes, hate speech and incitement to hatred

38. The Working Group is concerned about the rise of xenophobia across Europe caused by the political manipulation of people's fears about the increase in the number of migrants. In Italy, the Working Group has seen how people's fears have been manipulated to promote a racist anti-immigrant agenda, disseminating false information and inciting hatred against people of African descent and migrants. No country is free of racism and Italy is not an exception. The Working Group is particularly concerned about incidents of racially motivated crime, hate speech and incitement to hatred in the country.

39. The Working Group is deeply concerned by racist discourse in politics targeting public figures and politicians of African descent and the immunity that has shielded parliamentarians who have made racist remarks. Too often immunity and impunity for racism creates an enabling environment for racist abuse to be perpetrated at all levels of society, even if some ad hoc punitive measures have been adopted.

40. The Working Group is concerned that in some cases members of parliament have been shielded from prosecution. The Working Group is following the case of former Member of the European Parliament Cécile Kyenge, who was born in the Democratic Republic of the Congo and has Italian citizenship, and who has been the victim of hate speech and racist and sexist insults, in particular by Northern League (Forza Nuova)

[4] See http://europa.eu/rapid/press-release_STATEMENT-15-5697_en.htm

politicians and other Italians. During its visit, the Working Group followed up on its communication to the Government expressing concern, following the 28 January 2015 decision of the Immunity Board of the Senate not to sanction Deputy President of the Senate Roberto Calderoli for his 2013 statement describing Ms. Kyenge, then Minister for Integration, as an "orangutan". The Immunity Board concluded that Mr. Calderoli's words did not have racist connotations but were pronounced during a speech within a broader political context. All political parties' representatives expressed opinions in favour of the applicability of article 68 in that case and the final vote confirmed the rightness of the Board's conclusion.

41. The Working Group stated that Mr. Calderoli's public statement about Ms. Kyenge did have racist connotations and is in contravention with the absolute prohibition of racial and ethnic discrimination stipulated in international human rights law. The Working Group underlined the key role that political leaders and political parties can and ought to play in combating racism and encouraging political parties to ensure that their members refrain from public statements and actions that encourage or incite racism, racial discrimination, xenophobia, Afrophobia and related intolerance.

42. With regard to the use of Afrophobic or xenophobic language in politics, the Government informed the Working Group that by law the judicial authorities are entrusted with verifying the existence of criminal content in the documents, speeches and programmes of political representatives. It recalled that some public and elected officials have been prosecuted for incitement to racial hatred and promoting racist ideas.

43. The Working Group is also concerned about racially motivated insults in sport, such as those faced by Italian national football player Mario Balotelli and several other players of African descent playing in the Italian football league, including Kevin-Prince Boateng and Paul Pogba. In addition to experiencing verbal insults, Afrophobic chants, violence and abuse during matches and training sessions, players have also been targeted with racist messages through social media.

44. In that context, the Working Group welcomes efforts made by the Government to address racism in sport. According to information provided by the Government, Italian legislation has been progressively amended so as to provide for criminal and administrative punishments for those responsible for incitement to hatred. The Italian legislation in force (the Mancino Law) calls for measures to be adopted to counter discriminatory conduct during sporting events. In addition, the Sports Justice Code establishes that each act of discriminatory conduct must be sanctioned, whenever it is recognized and whether it is a direct or an indirect offence: such acts include denigration or insults motivated by race, colour, religion, language, sex, nationality, territorial or ethnic origin, and acts that constitute a means of ideological propaganda prohibited by law or that support acts of discriminatory conduct. In such circumstances, the football player, the football team manager, the associates and the partners found guilty of engaging in such acts would be sanctioned. Football clubs are reportedly responsible for the bringing in or the exhibition of pictures, slogans, symbols, emblems and similar objects containing racist expressions and for discriminatory manifestations (e.g., chorus chants and shouting) from supporters; they are also responsible for each declaration and the conduct of the club's managers, associates and partners if those persons are able to fuel discriminatory conduct. Before football matches, all clubs are obliged to inform the public about potential sanctions for the discriminatory conduct of football teams' supporters.

45. The Government informed the Working Group that several regulations have entered into force to prevent racist or discriminatory conduct since the introduction of a general principle of non-discrimination into the Code of Conduct of the Italian National Olympic Committee, which states that registered members, affiliates and others subject to its authority should abstain from all discriminatory behaviour, whether based on race, ethnic or

territorial origin, sex, age, religion or political or philosophical opinion. Relevant new provisions were reportedly introduced by the adoption of Act No. 146 of 17 October 2014 on urgent measures against unlawful and violent acts during sporting events. That law extends the applicability and the duration of the preventive measures concerning bans on access to sporting venues. Exclusion orders can be imposed by the provincial chief of police for a three-year period (or for a period of between five and eight years for recidivists) to those persons responsible for group violence, whenever the individual's active involvement has been ascertained. Moreover, it has a preventive impact when imposed on persons reported or convicted for displaying offensive, violent or racist banners, for crimes against the public order and serious crimes such as robbery, possession of explosives and drug dealing. Exclusion orders may be also imposed against those who have participated, even abroad, in particular situations jeopardizing public security and order. The legislation in force also makes it possible to suspend or not to start a football match in cases of manifestations of racism and intolerance. In 2014, 32 cases were recorded and 15 supporters have been reported to the competent authorities.

46. The Government also reported that in 2013 a task force was established within the Ministry of the Interior to provide security at sporting events and identify new initiatives to counter racism in sport. At the beginning of the 2014/15 football season, the task force decided to intensify its actions to fight racial, ethnic and religious discrimination during sporting events, to identify some strategic guidelines to monitor the phenomenon and to launch awareness-raising campaigns and educational activities in schools regarding the laws applicable in cases of racism and intolerance during sporting events.

47. Racist hate crimes by far-right white supremacist movements are also of concern in Italy. Racism-fuelled propaganda and anti-immigrant sentiments disseminated online are normalizing racism. Such groups are exploiting fears linked to the financial crisis, unemployment, extremism and global health concerns such as the Ebola virus to promote an Afrophobic and racist agenda. In 2013, the National Office against Discrimination documented that complaints of online racism constituted 30.9 per cent of all cases involving the media.

48. One particular case, which occurred in January 2010 in Rosarno, in the southern region of Calabria, earned international attention after two separate violent attacks on seasonal migrant workers of African descent led to a violent protest by large numbers of those workers and further retaliatory attacks by local residents. The authorities did respond with long-overdue attention to the exploitation and abuse of seasonal agricultural workers, but according to civil society reports the racist dimension of the attacks has been consistently minimized. The Working Group noted that such behaviour helps to maintain structural and institutional racism.

49. It has been reported that the Government has failed to identify racist and xenophobic violence as a serious issue in Italy and to take action to address it. The Working Group was informed by civil society representatives that part of the problem is that the true extent of racist and xenophobic violence in Italy is unknown. Italy has only recently begun to collect data on hate crimes, and there is underreporting owing to a lack of trust. Civil society is monitoring reports of racist and xenophobic crimes in the media, which gives an idea of the scale of the problem, but the Working Group is concerned that the State does not take that information into consideration.

50. Afrophobia and racial discrimination are manifest in the lack of protection afforded to people of African descent, a vulnerable group, in the difficulty that people of African descent have in gaining access to justice and in the failure to prosecute and provide reparation and remedy. Correcting this unacceptable situation must be done through education and leaders must strongly respond to and publicly condemn these incidents, as

well as take action to bring the perpetrators to justice and prevent a further rise in hate crimes.

B. Racial profiling, law enforcement and the criminal justice system

51. The Working Group was informed by civil society representatives that the Italian criminal justice system discriminates against foreigners and people of African descent. Reportedly, 40 per cent of detainees in pretrial detention are Africans or people of African descent, while 10 per cent in detention in general are Africans or people of African descent. Problems in accessing counsel and an interpreter have also been reported. The Working Group heard reports of racial profiling and that Africans and people of African descent are more likely to be asked to show identity documents.

52. In Italy, immigration has been associated with insecurity since the second half of the 1990s. Both criminal and immigration laws have resulted in a "criminalization" of migrants, including Africans and people of African descent. The Immigration Act of 1998 and the "Bossi-Fini Law" of 2002 introduced serious sanctions against irregular migrants. The foreign population in Italian prisons started to rise, reaching the record share of 37.09 per cent in 2010. Towards the end of the 1990s prison overcrowding became a serious concern for the Government. Both the European Court of Human Rights and the European Court of Justice sentenced Italy for a violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) for the degrading prison conditions experienced by many detainees. As a consequence, the Parliament and the Government approved various measures to remedy the problem, including the release of inmates serving short prison terms.

53. Migrants are commonly punished for less serious crimes than Italians, mostly related to drugs, prostitution or illegal immigration. On 31 December 2014, foreign prisoners constituted 32.56 per cent of the total prison population. The Working Group deplores the lack, at this level, of disaggregated data. During the visit, civil society representatives reported that new anti-immigration campaigns were appearing. The Working Group is concerned that, as a result of those campaigns, the number of inmates (especially immigrants) will start to rise again. The criminalization of migrants is of deep concern to the Working Group.

C. Disparities in access to health, education, housing and employment

54. The Working Group is concerned about the discrimination faced by people of African descent in access to education, health, employment and housing in Italy.

Education

55. The Working Group was concerned to learn of the racial discrimination, victimization, violence and harassment inflicted on children of African descent in schools by pupils and their teachers. It was reported that some teachers and others working in educational institutions lack sufficient training to deal with racial discrimination and the diversity of contemporary Italian society. The Working Group noted that the education curriculum does not contain sufficient information about the history of Italy and its role in the enslavement of Africans and in colonialism or about the ways in which Africa has contributed to the evolution of human history. This lack of understanding perpetuates modern-day racism against Africans and people of African descent.

56. According to data collected by the Ministry of Education, University and Research, during the academic year 2014/15 there were 802,844 foreign students in Italian schools

(roughly 9 per cent of the total). Most came from Algeria, Burkina Faso, Cameroon, Côte d'Ivoire, Egypt, Ghana, Morocco, Nigeria, Senegal and Tunisia. In a 2013 report, the Ministry noted that nationals of Eritrea, Guinea and Somalia were at particular risk of dropping out.

57. Representatives of the Ministry of Education, University and Research informed the Working Group that migrant children had the same rights to education and health as Italian minors. The Government reported that a number of steps had been taken to address racism in schools, including the passage of a ministerial directive dated 27 December 2012 on special educational needs, which aims to ensure more inclusive practices in classrooms through individualized and personalized educational plans. Migrant pupils too can benefit from the directive.

58. In 2013, a memorandum of understanding was signed by the Observatory for Protection against Acts of Discrimination and the Ministry of Education, University and Research to promote joint educational activities against all forms of racism and discrimination in schools. Specific guidelines dated 2014 provide a regulatory framework and suggestions for an inclusive approach to school organization and teaching. For example, each class can host a maximum of 30 per cent migrant pupils to facilitate effective inclusion. Since 2013/14, all schools have had to draft an annual plan on inclusion.

59. In 2014, the Ministry of Education, University and Research launched national guidelines aimed at lowering school dropout rates and supporting the educational achievement of each student. The Working Group was also informed about the National Observatory for the Integration of Foreign Students, established within the Ministry of Education, University and Research, which analyses educational policies and develops proposals for specific educational programmes that incorporate an intercultural approach to addressing racism, racial discrimination and prejudice at school. The Working Group welcomes these recent initiatives and encourages the authorities to ensure that they are implemented and that there is a special focus on children of African descent as a group that faces racial discrimination and Afrophobia to ensure that their right to education is respected and more generally that all their rights as children are respected.

Health

60. The Working Group was informed that while the national health system should provide all individuals in Italy, irrespective of their status and nationality, with essential health-care services in every ordinary or emergency case, racial discrimination continues to prevent access to health care. Migrants of African descent reportedly face additional barriers in accessing health care and other services. Doctors allegedly often do not believe the statements of people of African descent and make wrong assumptions based on racial prejudice. Moreover, negative stereotypes and poor knowledge of certain diseases can lead to differential treatment of patients of African descent. The Working Group was informed that in some cases during the Ebola outbreak a combination of racial bias and ignorance led to discrimination and panic despite the fact that the Government had provided information and that, to prepare medical personnel, particularly on the Ebola outbreak, a network of hospitals capable of dealing with infectious diseases had been created. The Government had also provided the public with targeted information about diseases in general and again every time an alert was triggered by the emergence or re-emergence of a disease.

61. In Milan, the Working Group was pleased to learn about the work of Naga, a non-governmental organization working to promote and protect the rights of all foreign nationals, as well as Roma and Sinti, without discrimination. Naga volunteers offer primary and specialist care, psychological counselling and psychiatric guidance, among other services, to local entities. In addition, Naga is committed to the constant monitoring and reporting of violations of rights such as the right to health, with the idea that defending the

rights of foreign citizens means defending the rights of all. All services are offered free of charge.

62. The existence of non-governmental organizations that provide health care to undocumented migrants indicates that there is a gap in the realization of the right to health. Moreover, there are variations among the regions in terms of providing health-care services. In Lombardy, for instance, emergency health care is given to undocumented migrants but longer-term health care, for example for cancer, is not.

Employment

63. With regard to employment, the Working Group was informed that people of African descent who are irregular migrants are often employed in construction, agriculture, gardening and clothes manufacturing and suffer exploitation in the form of unfavourable contracts, unequal pay and poor working conditions. The severe exploitation of people of African descent by organized criminal groups was reported in the areas of agriculture, construction, domestic help and labour-intensive manufacturing.

64. The Government informed the Working Group that steps were being taken in the area of employment. It reported that the Ministry of Labour and Social Policies was strongly committed to countering unreported labour, non-European Union citizens' exploitation and *capolarato*. It also informed the Working Group about article 12 of Law No. 148/2011, which introduces the offence of "illicit intermediation and labour exploitation", to be sanctioned with a prison term of between five and eight years and a fine of between 1,000 to 2,000 euros for each exploited worker. The monitoring of ordinary and extraordinary activities has entailed the establishment of ad hoc task forces at the provincial and regional levels, also with a view to exchanging good practices and experiences in the field. The ad hoc task forces involve the police, the carabinieri, the Guardia di Finanza and local health units in performing proper investigations in all relevant sectors, as occurred in the agricultural sector in southern Italy in 2016. Furthermore, the creation in 2014 of a "control room" for the network on the quality labour in the agricultural sector at the National Institute for Social Security, composed of agricultural professionals and representatives of trade unions, the Ministries of Labour and Social Policy and of Finance, and of the Conference of Regions, aims at evaluating basic prerequisites for the admission of companies, thereby encouraging inspection activities and the implementation of policies aimed at countering all forms of exploitation and *capolarato*. Two protocols have been signed in 2016 affecting the agricultural sector: one against *capolarato* and labour exploitation and one against *capolarato* and unreported and illegal labour. The protocols provide for the development of a new permanent network to carry out concrete joint interventions, including through the exchange of information among local actors, especially in those areas most exposed to criminality.

Housing

65. Despite the government programmes for integration, refugees, including those from Africa, are not sufficiently integrated into Italian society. During its visit, the Working Group visited a centre for Sudanese refugees created in 2004 and hosted by the municipality of Rome. It has been self-managed by around 120 refugees or asylum seekers, some of whom have been living in the centre for 10 years. The Working Group was informed that the residents had received a formal written communication from the municipality on 18 May 2015 telling them that they would have to leave the centre by the end of that month. During its visit, the Working Group was informed that the date had been postponed for another one or two months. It was concerned that the eviction notice did not contain an explanation; the residents had not been given sufficient time to leave the centre and no alternatives had been provided, demonstrating the lack of an integration plan for

refugees in Rome specifically and in Italy more generally. The obligation of States to refrain from and protect against forced evictions arises from several international legal instruments that protect the human right to adequate housing and other related human rights.

Migrants and asylum seekers

66. In Catania, Sicily, the Working Group witnessed the difficult situation in which the authorities found themselves owing to the large number of new arrivals by sea and the economic crisis. In 2014, there were reportedly 170,000 landings and, as at the time of the visit, as many as 140,000 landings had already taken place in 2015. The Working Group was invited by the Prefect of Catania to observe the arrival of migrants and asylum seekers in the port. The Working Group noted that all those arriving received medical care and basic necessities such as food, clothing and drinking water. While there was a noticeable presence of law enforcement officials, the Working Group noticed that most of the rescue and relief operation was organized by local Red Cross volunteers. The Working Group endorses the findings of the Special Rapporteur on the human rights of migrants that despite a challenging economic and political climate Italy has taken bold initiatives to address the unprecedented number of migrants and refugees arriving by boat. It agrees that European Union member States must collectively support front-line States such as Italy in providing a sustainable response that ensures full respect for the human rights of migrants.

67. The Working Group visited the centre for asylum seekers and refugees in Mineo, which is where many migrants stay while they wait for their claims to be processed. It heard disturbing allegations of overcrowding, bullying, intimidation, withheld daily allowances, insufficient psychological support and health checks and frustration over the lengthy asylum process. Some 4,000 migrants from different countries were living in the Mineo centre at the time of the visit, well above its capacity of 2,000. Most were from Nigeria.

68. At the Mineo camp, the Working Group found that the protracted waiting time that asylum seekers had to endure for their claims to be processed had devastating effects on their well-being. The asylum seekers told them of their frustration induced by waiting for their asylum applications to be processed, which takes anywhere between 12 and 18 months. The Working Group observed that people in the Mineo camp did not want to talk for fear that doing so would adversely affect their applications. According to some sources, tenders for services to the Mineo camp had been directed by corrupt government officials to companies controlled by organized criminal groups, which reportedly provide cheaper services than commercial companies would and pocket the difference. The substandard services at the camps are allegedly a consequence of corrupt officials siphoning money from government contracts.

69. In that connection, the Working Group was informed that in 2014 the Italian authorities carried out an investigation into corruption within the municipal government of Rome that revealed the existence of a criminal network; individuals and politicians were arrested. Salvatore Buzzi, President of the Eriches 29 consortium, which controlled reception centres around Rome, was arrested in the investigation. The national anti-corruption authority was asked to carry out an investigation into a number of suspect public contracts and in June 2015 the Italian police reportedly arrested a large number of people suspected of being part of a network of corrupt politicians, officials and business people in Rome accused of rigging public contracts to manage migrant reception centres. According to reports, warrants were also issued against other people in the area around Rome, in L'Aquila in central Italy and in Catania and Enna in Sicily. The investigation uncovered a system designed to ensure that a cartel would win lucrative contracts to manage migrant reception centres, exploiting the growing refugee crisis in the Mediterranean Sea.

D. Intersectionality of multiple forms of discrimination

70. During the visit, the fact that multiple grounds of discrimination intersected with one another was reported to the Working Group, which heard accounts of discrimination on the basis of pigmentation of skin, ethnicity, nationality, sex and religion, among others. Racism and the way in which other grounds of discrimination intersect in Italy need to be studied further to identify causes and effects and to develop strategies.

V. Conclusions and recommendations

A. Conclusions

71. The Working Group would like to reiterate its satisfaction at the willingness shown by the Government to engage in dialogue, cooperation and action to combat racial discrimination and implement the human rights recommendations received in that regard. The Working Group hopes that its report will support the Government in that process.

72. The Working Group is concerned about the invisibility of people of African descent in Italy. It takes the opportunity to highlight that, as set out in the Durban Declaration, it is essential for all countries to recognize the existence of their population of African descent and the cultural, economic, political and scientific contributions made by that population, and recognize the persistence of racism, racial discrimination, xenophobia and related intolerance that specifically affect them, and recognize that their long-standing inequality in terms of access to, inter alia, education, health care and housing has been a profound cause of the socioeconomic disparities that affect them.

73. Despite the positive measures taken by the Government to address racism, Afrophobia and racial discrimination, the Working Group is concerned about the discrepancy between the official discourse and legal framework to counter racism and the experiences of racial discrimination, xenophobia and hate speech, which points to the lack of effectiveness of the measures taken so far. It is also fundamentally concerned about the fact that the existence of people of African descent in Italian society continues not to be fully recognized.

74. The Working Group is concerned by the rise of xenophobia across Europe caused by the political manipulation of people's fears about the increase in migrants. In Italy, the Working Group has seen how people's fears have been manipulated to promote a racist anti-immigrant agenda, disseminating false information and inciting hatred against people of African descent and other migrants. In that context, the Working Group is concerned that immunity has been used to shield parliamentarians who have made racist remarks.

75. No country is free of racism and Italy is no exception. The Working Group is particularly concerned about incidents of racially motivated crime, hate speech and incitement to hatred. Racial discrimination is also manifest in the difficult access to justice and the failure to prosecute and provide a remedy for Africans and people of African descent.

76. While advances have been made in respect of protection of migrants and asylum seekers, such as the policy against pushbacks and the law giving undocumented migrants access to hospitals for emergency health care and education

without risk of being reported to the authorities, there are opportunities to strengthen the legal protection of their rights.

77. The lack of knowledge of the history and of the role played by the Italian State during the slave trade, of the colonial past of Italy and of the importance of the cultures of Africa is contributing to institutional and structural racism targeting Africans and people of African descent.

B. Recommendations

78. The recommendations below are intended to assist Italy in its efforts to combat all forms of racism, Afrophobia, racial discrimination, xenophobia and related intolerance.

79. The Working Group urges Parliament to publicly condemn racist, Afrophobic and xenophobic acts and the Government to ensure accountability and an effective remedy to counter any tendency, especially by politicians, to stigmatize and negatively stereotype people of African descent or use racist propaganda for political purposes. Intellectual and media awareness-raising on racism, Afrophobia and racial discrimination is also necessary.

80. A review of immunity laws and the manner in which they are interpreted is urgently needed so that immunity is not upheld in cases of racially motivated hate speech.

81. The Working Group encourages the Government to collect disaggregated data on persons who self-identify as either Italians of African descent or as Africans to ensure that all plans, projects and programmes address and protect their rights and are based on a better understanding of gaps. Data on representation should also be collected and disaggregated by ethnicity. People of African descent should be better represented in the judiciary, the prosecution service and the police, as well as in the mechanisms for refugee status determination and among immigration officials and prison officials.

82. Data should be collected and analysed to assess racial discrimination in the criminal justice system. Laws that prohibit racial profiling by law enforcement agencies should also be considered. Steps should be taken to ensure detainees' access to counsel and an interpreter.

83. The Working Group encourages the Government to ensure that the national action plan against racism and xenophobia includes people of African descent as a specific group facing racism, racial discrimination, Afrophobia, xenophobia and related intolerance, and to appoint a focal point within the National Office against Discrimination.

84. The Working Group urges the Government to establish a national human rights institution that is in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) and, in the interim, take steps to make the National Office against Discrimination independent and fully equipped to investigate all forms of human rights violations, including acts of racism, racial discrimination, xenophobia, Afrophobia and related intolerance.

85. The Working Group recommends that the history of the trade in Africans and of colonialism be studied and that that history be included in the school curriculum, to do justice to all those who suffered and continue to suffer from the use of race as a criterion for classifying humans in society.

86. **The content of training courses for teachers and others working in educational institutions should focus on the principles of equality and non-discrimination and on other measures designed to ensure that issues affecting people of African descent are addressed. There should also be more teachers, as well as non-teaching staff, of African descent. The Working Group recommends making targeted efforts to support refugees through vocational training and other job-seeking opportunities. Laws should include special measures for integrating refugees and migrants into Italian society. Affirmative action by way of educational, housing, health-care and employment opportunities should be taken.**

87. **Evictions must be carried out lawfully, only in exceptional circumstances and in full compliance with the relevant provisions of international human rights law. The authorities should cease the forced eviction of people of African descent and set out procedural protections based on international law. As regards the centre for Sudanese refugees, the Working Group encourages the municipality of Rome to respect the residents' right to information, full consultation and participation.**

88. **The Working Group recommends that the Ministry of the Interior increase the number of territorial commissions to expedite the review of claims for asylum and to decrease the waiting time in reception centres.**

89. **It also recommends reforming the law regulating Italian citizenship in order to grant citizenship to children born in Italy of foreign citizens and minors entering the country and expedite the process for adults.**

90. **It further recommends that the Government adopt laws guaranteeing the right to counsel and the right to an interpreter at all stages of the asylum proceedings, including at the initial stage, when asylum seekers apply for refugee status.**

91. **The Working Group recommends that people of African descent be included in the relevant mechanisms as officials with the duty to decide the refugee status of applicants.**

92. **The Working Group urges the Government to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as Protocol No. 12 to the European Convention on Human Rights, and recommends that it enter into bilateral treaties to ensure respect for the rights of migrant workers and their families.**

93. **The Working Group reiterates the recommendations made by the Special Rapporteur on contemporary forms of racism and racial discrimination, xenophobia and related intolerance following his visit to Italy in 2006, which are still relevant, and emphasizes the recommendations made by the Special Rapporteur on the human rights of migrants regarding European Union border management.**

94. **The Working Group calls on European Union member States to support the efforts of the Government of Italy to rescue boatloads of migrants and asylum seekers by making good on their commitment to relocate thousands of people from Italy to other member States.**

95. **The Working Group suggests broadening the law to give undocumented migrants access not only to hospitals for emergency health care and to schools without running the risk of being reported to the authorities, but also to other basic human rights. It also proposes more pathways to citizenship for migrants, including undocumented migrants.**

96. **The Working Group encourages the Government of Italy to undertake impact-oriented activities in the framework of the International Decade for People of African Descent and the theme of the Decade, which is "Recognition, justice and development", to bridge the gaps between policies and practice, including through the implementation of relevant recommendations for achieving recognition, justice and development for Africans, people of African descent and all Italians.**

97. **The Working Group regrets that the provisions of article 3 of the Constitution concerning equality do not also apply to non-citizens and that it is not clear whether the offence of racial discrimination in the legislation of the State party includes both the purpose and effect of the prohibited acts (see also art. 1 of the Constitution).**

98. **In the light of Committee on the Elimination of Racial Discrimination general recommendation No. 30 (2005) on discrimination against non-citizens, the Working Group urges the Government to ensure that non-nationals enjoy, in conditions of equality, protection and recognition before the law. It also recommends that the Government ensure that its laws and policies do not discriminate, deliberately or not, on the basis of race, colour, descent or national or ethnic origin. The Working Group emphasizes the importance of ensuring that the legislative guarantees against racial discrimination apply to non-citizens, regardless of their immigration status.**

United Nations

A/HRC/33/61/Add.2

General Assembly

Distr.: General
18 August 2016

Original: English

Human Rights Council
Thirty-third session
Agenda item 9
Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Report of the Working Group of Experts on People of African Descent on its mission to the United States of America

Note by the Secretariat

The report transmitted herewith contains the findings of the Working Group of Experts on People of African Descent on its visit to the United States of America from 19 to 29 January 2016. In it, the Working Group presents the current legal, institutional and policy framework, and measures taken to prevent racism, racial discrimination, xenophobia, Afrophobia and related intolerance faced by people of African descent in the United States, underscoring positive developments as well as gaps in implementation. The Working Group describes the situation, highlights good practices and the main challenges identified, and makes concrete recommendations.

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Report of the Working Group of Experts on People of African Descent on its mission to the United States of America*

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* Circulated in the language of submission only.

I. Introduction

1. At the invitation of the Government of the United States of America, the Working Group of Experts on People of African Descent undertook a visit to the United States from 19 to 29 January 2016. The members of the delegation were Mireille Fanon Mendès-France, Sabelo Gumedze and Ricardo Sunga III.

2. The Working Group visited Washington, D.C.; Baltimore, Maryland; Jackson, Mississippi; Chicago, Illinois; and New York City. The Working Group met with representatives of several government departments and offices, including the Department of State, the Department of Homeland Security, the Department of Housing and Urban Development, the Department of Health and Human Services, the Department of Labor, the Department of Justice and the Environmental Protection Agency. The Working Group also met with officials of the Equal Employment Opportunity Commission, in Washington, D.C.

3. In Baltimore, the Working Group met with the Maryland federal judges. In Jackson, the Working Group met with officials of the Office of the Mayor and the Office of the Attorney General of the State of Mississippi. In Chicago, the Working Group met with the Attorney General of the State of Illinois, and with representatives of the Office of the Mayor of the City of Chicago and the Chicago Police Department. In New York City, the Working Group met with the Office of the Attorney General of the State of New York. The Working Group also met with officials of the White House working on African American issues and with staff of the congressional black caucus and interacted with a member of the United States Senate. In all the cities that the Working Group visited, it also met with hundreds of African Americans from communities with a large population of people of African descent living in the suburbs, as well as with lawyers, academics and representatives of non-governmental organizations.

4. The Working Group thanks the Government for its invitation and for its cooperation during the visit. In particular, the Working Group thanks the Office of Human Rights and Humanitarian Affairs at the Department of State for its support. The Working Group would also like to warmly thank the US Human Rights Network for coordinating meetings with civil society in different parts of the country, and all the people who shared their views on the human rights situation of African Americans in the country.

5. The Working Group regrets that it was not given access, contrary to the terms of reference for special procedure mandate holders, to Mississippi State Penitentiary (Parchman Farm) as had been requested. Visits to such facilities provide opportunities to obtain views and to make recommendations regarding measures needed to address violations and to improve compliance with international law. Failure to permit and facilitate such visits undermines the responsibility of the United States to cooperate with the United Nations human rights mechanisms. The Working Group also regrets that it was not possible to meet with all of the high-level state and local-level authorities, as had been requested.

II. Background

A. Historical overview

6. The history of people of African descent in the United States is well documented. The first enslaved Africans were brought to the American colonies in the early part of the seventeenth century. Slavery became an entrenched institution, with Africans making up one fifth of the population of the American colonies by 1775. The issuance in 1863 of the Emancipation Proclamation, which declared that all enslaved persons within the rebellious

states were free, was followed by the Thirteenth Amendment to the Constitution of the United States of America, which outlawed the practice of enslavement, the Fourteenth Amendment to the Constitution, in 1868, granting full United States citizenship to all persons born or naturalized in the United States, including African Americans, and the Fifteenth Amendment to the Constitution, in 1870, prohibiting denial of the right to vote on the basis of race.

7. Despite these legal and constitutional developments, the prevalence of "Jim Crow" laws — laws at the state and local levels that enforced racial segregation and persecution, primarily in the southern states — perpetuated political disenfranchisement, social and economic exploitation, violence and the overall subjugation of people of African descent until the 1960s. Lynching was a form of racial terrorism that has contributed to a legacy of racial inequality that the United States must address. Thousands of people of African descent were killed in violent public acts of racial control and domination and the perpetrators were never held accountable.

8. The civil rights movement from 1954 to 1968 was another important era in the struggle for rights by people of African descent in the country. The Montgomery bus boycott, the Selma to Montgomery marches, and many non-violent protests and acts of civil disobedience throughout the country led to further legislative developments, including but not limited to the Civil Rights Act of 1964, which prohibited, among other things, discrimination based on race or colour; the Voting Rights Act of 1965, which sought to overcome the legal barriers to the exercise of voting rights by African Americans; and the Fair Housing Act of 1968, which prohibited discrimination in the purchase or renting of property.

9. The 2010 United States census indicated that there were 43.21 million African Americans, constituting 14 per cent of the United States population. The July 2015 estimates indicated that there were 46.28 million African Americans, constituting 14.4 per cent of the United States population.[1] Despite substantial changes since the end of the enforcement of Jim Crow and the fight for civil rights, a systemic ideology of racism ensuring the domination of one group over another continues to impact negatively on the civil, political, economic, social and cultural rights of African Americans today.

II. Legal framework and steps taken for the protection of the human rights of people of African descent

A. Legal framework

10. The United States has ratified two of the international instruments related to the fight against racial discrimination: the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. Despite having also signed other relevant instruments, such as the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, which could enhance the protection and recognition of the rights of people of African descent, the internal processes for ratification of these instruments have been stalled for a long time. The United States has not signed and ratified any of the human rights treaties that would allow United States citizens to present individual complaints to the United Nations human rights treaty bodies or to the

[1] United States Census Bureau. See http://factfinder.census.gov.

Inter-American Court of Human Rights. The United States is subject to the individual complaints procedure in the Inter-American Commission on Human Rights. The Working Group was informed that due to the standing declarations by the United States considering the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as non-self-executing, courts in general in the United States are reluctant to consider international human rights treaties and jurisprudence when these are invoked as independent legal arguments. Owing to these factors, human rights treaties are generally not recognized as giving rise to individually enforceable rights in United States courts.[7]

11. In its first report to the United States, in 2010, the Working Group provided an overview of the strong legal framework in place to combat racial discrimination. The Working Group recognizes that the country's Constitution, particularly its Thirteenth, Fourteenth and Fifteenth Amendments, in combination with civil rights legislation and the Supreme Court's jurisprudence, have provided people of African descent with legal tools to combat interpersonal and institutional discrimination. However, having listened to African Americans in different parts of the country, the Working Group considers that civil rights laws are not being fully implemented, and even if fully implemented, they are insufficient to overcome and transform the institutional and structural racial discrimination and racism against people of African descent. Mass incarceration, police violence, housing segregation, disparity in the quality of education, labour market segmentation, political disenfranchisement and environmental degradation continue to have detrimental impacts on people of African descent, despite the application of civil rights laws.

12. The Working Group was informed that the federal structure of the United States has the virtue of allowing some states to explore more progressive policies to protect and promote the rights of people of African descent, which other states could benefit and learn from. Nevertheless, the Working Group also received information that the autonomy of the states and of local government also allows for the establishment of more regressive policies. While federal law provides a baseline of protection for civil and human rights, state laws can vary, and thus people of African descent enjoy different levels of protection of their rights depending on the state that they are living in.

13. The Working Group was also informed that some state and local governments have limited avenues and resources to ensure the realization of the rights of people of African descent. While state attorneys general and state civil rights commissions have a key role in combating Afrophobia and racial discrimination at the state level, the Working Group perceived disparities in the commitment levels and capacities of those institutions to implement state civil rights legislation.

B. Institutional and policy measures

14. While there is no exclusive federal authority charged specifically with monitoring and advancing the situation of people of African descent, the Working Group was informed about measures that several federal agencies were undertaking to enforce civil rights laws. In general, authorities at the federal and state levels acknowledged that racial discrimination was a great challenge in the United States and acknowledged the need to adopt focused policies to address existing gaps in order to tackle institutional and structural racism. One example is My Brother's Keeper, a White House initiative launched in February 2014 to address opportunity gaps that African American boys and young men face in regard to their

[7] See HRI/CORE/USA/2011, para. 133.

access to basic health care, good nutrition, high-quality education, and labour opportunities, and in reduction of violence.

15. Another measure was the creation of a task force to identify best practices and to make recommendations to the President on how policing practices can promote effective crime reduction while building public trust. The task force released its report on 18 May 2015 with a set of recommendations divided into six pillars: building trust and legitimacy, policy and oversight, technology and social media, community policing and crime reduction, training and education, and officer wellness and safety.[3] The report adopted positive recommendations on key issues such as racial profiling, the use of force, the independence of investigations into killings by police officers, data collection, civilian oversight of law enforcement agencies and police workforce diversity, among others. The recommendations are not binding on state and local agencies.

16. The Civil Rights Division of the Department of Justice has been focusing on tackling racial bias in law enforcement through civil rights investigations into local police departments. Since 2009, the Department of Justice has opened 22 investigations and has reached 16 agreements to reform unconstitutional policing practices.[4] In 2010, the United States Attorney General created the Office for Access to Justice to address the crisis in the provision of indigent legal defence that continues to have a specific impact on African Americans and other minorities. In 2016, the Attorney General launched a set of reforms to the criminal justice system known as the Roadmap to Re-entry, which is aimed at reducing the existing high level of recidivism and at improving public health, child welfare, employment, education, housing and other key reintegration outcomes for those who have served their time in the federal prison system.[5]

17. One of the most important policy developments since the 2010 report of the Working Group has been the adoption of the Patient Protection and Affordable Care Act, which has allowed 2.3 million African American adults to gain medical health insurance.

18. In 2015, the Department of Housing and Urban Development released a new rule — Affirmatively Furthering Fair Housing — which provides planning tools to communities that are taking actions to overcome historic patterns of segregation.[6] The Equal Employment Opportunity Commission issued new guidance on the application of disparate impact analysis in cases involving the use by employers of arrest and conviction records in employment decisions, which often have a disproportionate impact on racial minorities.[7] Under this guidance, for example, the Equal Employment Opportunity Commission filed a lawsuit against BMW Manufacturing Co., alleging that the company excluded African American workers from employment at a disproportionate rate when the company's new logistics contractor applied BMW's criminal conviction records guidelines to incumbent logistics employees. In 2015, a United States district court ordered the company to pay $1.6 million and provide job opportunities to alleged victims of racial discrimination.[8]

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[3] Final report of the President's Task Force on 21st Century Policing. Available from www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

[4] See www.justice.gov/crt/special-litigation-section-cases-and-matters#police.

[5] Available from www.justice.gov/reentry/file/844356/download.

[6] See www.hudexchange.info/programs/affh.

[7] Enforcement guidance on the consideration of arrest and conviction records in employment decisions under title VII of the Civil Rights Act of 1964. See www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

[8] See www.eeoc.gov/eeoc/newsroom/release/9-8-15.cfm.

19. The landmark decision of the Supreme Court in June 2016 in *Fisher v. University of Texas at Austin et al.*[9] which upheld an affirmative action policy at the University of Texas, permitting the inclusion of race as one of the components to be considered during the applications process, is a positive development with longer-term policy implications.

IV. Manifestations of racial discrimination

A. The criminal justice system and barriers to civil and political participation

20. The Working Group is deeply concerned at the alarming levels of police brutality and excessive use of lethal force by law enforcement officials, committed with impunity against people of African descent in the United States. In addition to the most recent and well-known cases of killings of unarmed African Americans — such as the cases of Eric Garner, Michael Brown, Tamir Rice, Walter Scott, Freddie Gray and Laquan McDonald — the Working Group received information about many other similar cases. The Working Group met with a considerable number of relatives of African Americans allegedly killed by police officers that are still seeking justice for their loved ones, including Tyrone West, Tyron Lewis, Jonathan Sanders, Oscar Grant, Tony Robinson, Marlon Brown, India Kager, Ronald Johnson, Mohamed Bah, Rekia Boyd, Sandra Bland and Alonso Smith.

21. Despite efforts made by the Department of Justice, there is still a lack of an official national system to track killings committed by law enforcement officials. Federal authorities commented that the main reason for this problem is that the 18,000 police departments and law enforcement agencies in the United States are not obliged to report these types of incidents. The Department of Justice was aware of this information gap and informed the Working Group that, notwithstanding the need for legislation, it was also building a system to track information nationwide. To date, the system had not been launched.

22. In the absence of a public national system to track cases of killings by police officers, the *Guardian* newspaper's "The Counted" database identified a total of 1,136 people killed by the police in 2015, of whom 302 were African Americans. African Americans were killed at twice the rate of white, Hispanic and Native Americans. In addition, about 25 per cent of the African Americans killed were unarmed, compared to 17 per cent of the white people.[10] The *Washington Post* database of police shootings registered 990 people shot dead in 2015, of whom 38 were unarmed African Americans.[11] Excessive and disproportionate use of force against African Americans also includes the use of tasers and heavy-handed assaults by law enforcement officers, which also have debilitating consequences for victims; there is no national system to track such incidents, either.

23. The Working Group is deeply concerned about the low number of cases where police officers have been held accountable for these crimes, despite the evidence. The *Guardian* reported that only 18 law enforcement officers were charged with crimes in relation to the 1,136 killings registered in 2015.[12] One in every four killings by police

[9] *Fisher v. University of Texas at Austin et al.*, 579 U.S. (2016).

[10] See www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database.

[11] See www.washingtonpost.com/graphics/national/police-shootings.

[12] See www.theguardian.com/us-news/2015/dec/31/the-counted-police-killings-2015-young-black-men.

officers that occurred in the first quarter of 2015 remain unresolved more than a year later, and 69 per cent of the 289 cases of killings by the police in the first three months of 2015 have now been ruled justified or accidental.[13] The final report of the President's Task Force on 21st Century Policing acknowledged some of the obstacles in tackling impunity related to killings by police officers and recommended mandatory external and independent criminal investigations and the use of external and independent prosecutors in cases of police use of force resulting in injury or death.[14]

24. Killings of unarmed African Americans by the police is only the tip of the iceberg in what is a pervasive racial bias in the justice system. The Working Group heard testimonies that African Americans face a pattern of police practices which violate their human rights: they are disproportionately targeted for police surveillance, and experience and witness public harassment, excessive force and racial discrimination. Due to racial bias, there is fear of approaching the police for help and there is also a failure on the part of the State to provide protection. The Working Group heard testimonies from African Americans based on their experience that from an early age they are treated by the State as a dangerous criminal group and face a presumption of guilt rather than of innocence. The rapid negative escalation of situations and the excessive use of force disproportionately used on African Americans demonstrates this concern. The Working Group heard reports that racial profiling is a rampant practice among law enforcement officials. During the country visit, the Working Group was informed about and observed the excessive control and supervision targeting all levels of the lives of African Americans. This control has been reinforced since September 2001 by the introduction of the Patriot Act, and affects not only United States citizens but also has a disparate impact on the detention, treatment and deportation of undocumented migrants, including people of African descent, who enter the United States.

25. The report by the Department of Justice on the Ferguson Police Department, released on 4 March 2015, confirmed that these practices are used. On the basis of police data on stops, searches and arrests, the report documented that although African Americans constitute 67 per cent of the population in Ferguson, 85 per cent of traffic stops, 90 per cent of tickets and 93 per cent of arrests made by the Ferguson police in 2012-2014 were against African Americans. One of the main conclusions of the report was that "Ferguson's law enforcement practices are shaped by the City's focus on revenue rather than by public safety needs. This emphasis on revenue has compromised the institutional character of Ferguson's police department, contributing to a pattern of unconstitutional policing... Further, Ferguson's police and municipal court practices both reflect and exacerbate existing racial bias, including racial stereotypes. Ferguson's own data establish clear racial disparities that adversely impact African Americans. The evidence shows that discriminatory intent is part of the reason for these disparities."[15]

26. Similarly, a report issued in April 2016 by the Police Accountability Task Force in Chicago concluded that racism was one of the main factors that could explain the pattern of arrests without justification, detentions without legal counsel, and physical and verbal abuse, including deaths and injuries, against African Americans committed by members of the Chicago Police Department. The report shows that despite African Americans constituting only one third of the city's population, 74 per cent of the 404 people shot by the Chicago police between 2008 and 2015 were black, three out of every four people on whom Chicago police officers used tasers between 2012 and 2015 were African Americans,

[13] See www.theguardian.com/us-news/2016/apr/13/the-counted-us-police-killings-officers-cleared

[14] Action items 2.2.2 and 2.2.3.

[15] United States Department of Justice, Civil Rights Division, "Investigation of the Ferguson Police Department", 4 March 2015, p. 2. Available from www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

and 72 per cent of the investigative street stops that did not lead to arrests in the summer of 2014 were carried out on African Americans. The report emphasizes that the Chicago Police Department's own data give "validity to the widely held belief that the police have no regard for the sanctity of life when it comes to people of colour".[16]

27. The Working Group recognizes steps taken at the federal and state level to end racial profiling. In 2014, the City of New York withdrew an appeal in connection with the landmark *Floyd v. City of New York* case and agreed to join a remedial process ordered by a federal judge, who had found the City liable for a decade-long pattern of discriminatory and unconstitutional stop-and-frisk practices that disproportionately affected the black and Latino communities.[17] In a recent report by the independent monitor of the remedial process, it was underscored that despite the recent reductions in the absolute number of stops recorded by the New York Police Department and the adoption of a set of preventive measures, there were still major challenges ahead in ensuring that written changes in policies were carried out in practice.[18]

28. The Department of Justice, as recommended by the Committee on the Elimination of Racial Discrimination,[19] reviewed the 2003 guidance regarding the use of race by federal law enforcement agencies and adopted in 2014 new guidance that also prohibits law enforcement biases based on ethnicity, gender, national origin, religion, sexual orientation or gender identity. The new guidance eliminates the exception made in the former guidance regarding the use of racial profiling in cases of national security threats and in enforcing laws protecting the integrity of the nation's borders.[20]

29. Although crime rates in the United States have been decreasing for the last 20 years, the federal and state prison and local jail population has soared to over 2.2 million people, with another 7 million on parole or probation.[21] African Americans are overrepresented in the penitentiary system, accounting for 36 per cent of sentenced federal and state prisoners.[22] African American women constitute 21 per cent of the imprisoned female population. The incarceration rate for African American males is 5.9 times higher than the rate for white males, while the rate for African American females is 2.1 times higher than the rate for white females.[23] The Sentencing Project has underscored that if current trends continue, one of every three black American males born today can expect to go to prison in his lifetime.[24]

30. Thousands of young African Americans, particularly those living under the poverty line and with low levels of educational attainment, have been placed in detention centres, without addressing the root causes of crime, guaranteeing better security to the communities where they lived or offering them effective rehabilitation.

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[16] Police Accountability Task Force, "Recommendations for reform: restoring trust between the Chicago police and the communities they serve", April 2016, p. 8.

[17] See *Floyd v. City of New York*, 959 F. Supp 2d 540 (Southern District of New York, 2013).

[18] Second report of the independent monitor, February 2016. See https://ecrjustice.org/sites/default/files/attach/2016/02/Floyd%20Monitor%20Second%20Status%20Report%20Feb%202016.pdf.

[19] See CERD/C/USA/CO/7-9.

[20] Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation or Gender Identity, December 2014. See www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf.

[21] Bureau of Justice Statistics. See www.bjs.gov/content/pub/pdf/cpus14.pdf.

[22] Bureau of Justice Statistics. See www.bjs.gov/content/pub/pdf/p14.pdf.

[23] Executive Office of the President of the United States, "Economic perspectives on incarceration and the criminal justice system", April 2016.

[24] See http://sentencingproject.org/wp-content/uploads/2015/12/Race-and-Justice-Shadow-Report-ICCPR.pdf.

31. The Working Group was informed that the "War on Drugs" had had a devastating impact on African Americans and that mass incarceration was considered a system of racial control that operated in a similar way to how Jim Crow laws once operated.[25]

32. The Working Group observed that the federal authorities, and some state authorities, have recognized that mass incarceration has been ineffective and have started taking measures to curb some of its negative impacts. At the federal level, the Administration has worked to enhance common-sense sentencing reforms by reducing disparities in the mandatory minimums for crack and powder cocaine possession (Fair Sentencing Act of 2010) and by modernizing the federal sentencing guidelines for drug crimes.[26] The majority of states have also lowered sentences for drug and property crimes and have increased opportunities for early release.[27]

33. The Working Group was also informed about the serious disadvantages that individuals with criminal records or a history of incarceration face when they go back to their communities, in accessing employment, housing, health, safety net programmes and welfare assistance. For example, African Americans with criminal records are 50 per cent less likely to receive an interview request or job offer than individuals without criminal records. Furthermore, white men with a criminal record had more positive responses in job applications than African American men with no criminal record even when their work experience was the same.[28] Individuals with records of low-level non-violent offences may be denied public housing assistance, and individuals with a felony drug record are fully or partially excluded from food stamps (the Supplemental Nutrition Assistance Program, also known as SNAP) in 30 states.[29]

34. Acknowledging this problem, the Federal Government has put in place some re-entry programmes. The Working Group was informed that the Office of Personnel Management had modified its rules to delay inquiries into criminal history until later in the federal hiring process. Grantees of the Department of Labor's Re-entry Employment Opportunities programme are able to use grant funds to pay non-profit legal services centres to assist programme participants with mitigating the impact of criminal records, and the Department of Housing and Urban Development intends providing funds for organizations to assist with expunging, sealing and/or correcting juvenile or adult records. Nevertheless, the Working Group was informed that federal and state re-entry programmes are underfunded in terms of meeting the needs of the 600,000 prisoners released each year.

35. The Working Group is concerned about inadequate conditions of detention and about particularly serious barriers in accessing health treatment, including mental health treatment. A large number of prisoners in Pennsylvania, who have been diagnosed with

[25] Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (The New Press).

[26] In 2014, with the support of the Department of Justice, the independent United States Sentencing Commission voted to amend federal sentencing guidelines for certain drug crimes. This change in sentencing guidelines will prospectively reduce the federal prison population by 6,500 prisoners over five years.

[27] Rebecca Silber, Ram Subramanian and Maia Spotts, "Justice in review: new trends in state sentencing and corrections 2014-2015", Vera Institute of Justice, May 2016. See www.vera.org/sites/default/files/resources/downloads/state-sentencing-and-corrections-trends-2014-2015.pdf.

[28] "Criminal stigma, race, gender and employment: an expanded assessment of consequences of imprisonment for employment". See https://csgjusticecenter.org/reentry/publications/criminal-stigma-race-gender-and-employment-an-expanded-assessment-of-consequences-of-imprisonment-for-employment.

[29] Executive Office of the President of the United States, "Economic perspectives on incarceration and the criminal justice system", April 2016.

hepatitis C and are primarily of African descent, have reportedly not received appropriate medication due to the high costs of treatment. The Working Group heard testimonies of labour impositions on inmates, who earned around 15 to 20 cents per hour of work. African American communities emphasized that the privatization of detention centres might tend to privilege the earning of profits, by sacrificing adequate detention conditions. The Working Group also heard how the mass incarceration of African American men and women had had a devastating impact on their children.

36. The Working Group commends the landmark Supreme Court decisions that banned the application of the death penalty for children under 18 years of age (*Roper v. Simmons*[30]), that prohibited life sentences without parole imposed on juveniles convicted of non-homicide offences (*Graham v. Florida*[31]) and that considered unconstitutional mandatory life sentences without parole for children under 17 years of age convicted for homicide (*Miller v. Alabama*[32]). Nevertheless, the Working Group is concerned that life imprisonment sentences can still be imposed on children convicted of homicide, that in 15 states children can still be tried as adults, and that around 10,000 children are housed in adult prisons and jails on any given day in the United States. According to the Equal Justice Initiative, 70 per cent of the children sentenced to life in prison are African Americans.[33]

37. Solitary confinement or restrictive housing is an extensive practice in the United States. The Liman Program at Yale University estimated that approximately 80,000 to 100,000 inmates were being held in restrictive housing in federal and state penitentiaries in the fall of 2014.[34] Based on the results of the National Inmate Survey 2011-2012, the Bureau of Justice Statistics of the Department of Justice estimated that 18 per cent of the inmates in federal and state prisons affirmed having been placed in solitary confinement during the course of 12 months.[35] A study made by the New York City Department of Health and Mental Hygiene on the records of first-time inmates in the New York City jail system between 2011 and 2013 found that African Americans were 2.52 times more likely than whites to be put in solitary confinement.[36]

38. The Working Group acknowledges that on 25 January 2016, the President of the United States, Barack Obama, announced the adoption of a set of recommendations made by the Department of Justice on the use of solitary confinement in the federal prison system. The Department of Justice recommended important measures, such as the ending of solitary confinement for juveniles and for inmates who have committed low-level infractions, the placement of inmates with serious mental illness in alternative forms of housing, limitations on the use of punitive segregation, the introduction of the principle of less restrictive conditions for inmates who face legitimate threats inside the prison, and the establishment of a data system to report on the use of solitary confinement. The Working Group was also informed about some reforms made at the state level (namely in Colorado, New Mexico, Virginia and Washington) aimed at restricting the use of solitary confinement. Notwithstanding these positive steps, the Working Group is concerned that

[30] *Roper v. Simmons*, 543 U.S. 551 (2005).
[31] *Graham v. Florida*, 560 U.S. 48 (2010).
[32] *Miller v. Alabama* 567 U.S. 132 S.Ct. 2455 (2012).
[33] Equal Justice Initiative, "All children are children: challenging abusive punishment of juveniles".
[34] The Liman Program, Yale Law School, and the Association of State Correctional Administrators, "ASCA-Liman 2014 national survey of administrative segregation in prison" (2015).
[35] Department of Justice, Report and recommendations concerning the use of restrictive housing, 2016. Available from www.justice.gov/restrictivehousing.
[36] Eatos Kaba and others, "Disparities in mental health referral and diagnosis in the New York City Jail Mental Health Service", *American Journal of Public Health*, vol. 105, No. 9 (September 2015), pp. 1911-1916.

the recommendations made by the Department of Justice are not binding and are only applicable to the federal prison system.[37]

39. The Working Group was also informed that race was a significant factor in death penalty cases in the United States. African Americans represent 41.7 per cent of the death row population and 34.6 per cent of defendants executed since 1976 in the United States.[38] Studies also reveal that there is a strong correlation between race and the decision to impose the death penalty. Despite the fact that a vast majority (90 per cent) of homicides in the United States are intraracial, out of the 1,359 inmates executed in the United States (in the period from the 1976 reinstatement of capital punishment to 2013), only 17 were white defendants convicted for killing African Americans, while 230 were African American defendants convicted for killing white persons.

40. The racial composition of the jury is one of the main identified causes of racial bias in the application of the death penalty. While the Constitution of the United States of America entitles defendants to trial by an impartial jury, a common pattern in many states is that minorities are underrepresented on capital punishment juries. The Working Group acknowledges the recent ruling (*Foster v. Chatman*)[39] in which the Supreme Court considered that prosecutors had violated *Batson v. Kentucky* (1986) regarding race-based discrimination in jury selection.

41. The dangerous ideology of white supremacy inhibits social cohesion among the United States population. Hate crime groups, including white supremacist terror groups, are still active in the United States, targeting African Americans, as was seen in the attack at a church in Charleston in 2015. The Confederate flag is considered as a symbol of hate for many African Americans and they have led campaigns to have it removed, however it still is used by some local authorities.

42. The Working Group was also concerned that voter ID laws with increased identification requirements and limits on early voting and registration in several states served to discriminate against minorities such as African Americans, contrary to the spirit of the Voting Rights Act of 1965. In 2013, the Supreme Court, in its decision in *Shelby v. Holder*, struck down parts of the Voting Rights Act, thereby making it easier to put in place voting restrictions at the state and local levels.

B. Disparities in access to education, health, housing and employment

43. The cumulative impact of racially motivated discrimination faced by African Americans in the enjoyment of their rights to education, health, housing and employment, among other economic, social, cultural and environmental rights, has had serious consequences for their overall well-being. Racial discrimination continues to be systemic and rooted in an economic model that denies development to the poorest African American communities. More than 10 million (26 per cent) of African Americans remain mired in poverty, and of that figure, almost half (12 per cent) live in what is known as "deep poverty".[40]

[37] Executive Office of the President of the United States, "Economic perspectives on incarceration and the criminal justice system", April 2016.

[38] See www.deathpenaltyinfo.org/race-death-row-inmates-executed-1976#defend.

[39] *Foster v. Chatman*, 578 U.S. (2016).

[40] See www.feedingamerica.org/hunger-in-america/impact-of-hunger/african-american-hunger/african-american-hunger-fact-sheet.html.

44. The Working Group is concerned about reports that across the country there are police officers in schools, without appropriate training, arresting children for minor offences and dealing with behaviour that previously would be handled as part of a school disciplinary process, resulting in the criminalization of children's behaviour and severe punishment. The police have the authority to detain, frisk and arrest children in school. For example, a black female student was violently arrested by a school resource officer at Spring Valley High School in South Carolina in 2015. Zero tolerance policies and heavy-handed efforts to increase security in schools have led to the excessive penalization and harassment of African American children through racial profiling. African American children are more likely to face harsh disciplinary measures than white children and are being pushed out of school into the criminal justice system — a phenomenon that has been described sadly as the "school to prison pipeline".[41]

45. The Working Group is concerned by the underfunding and closure of schools, particularly those in poor neighbourhoods with significant African American populations. The Working Group was particularly concerned to learn of threats to close Chicago State University, a historically black university.

46. In school curricula, the historical facts concerning the period of colonization, the transatlantic trade in Africans, and enslavement, which have been crucial to the organization of contemporary American society, are not sufficiently covered in all schools. The curricula in some states fail to address adequately the root causes of racial inequality and injustice. This contributes to the structural invisibility of African Americans.

47. The Working Group also received information about de facto segregation of schools. This segregation appears to be nurtured by a culture rooted in the legacy of racial inequality and by failure to address the history of racial injustice, enslavement and the Jim Crow laws.

48. The Working Group noted that a number of factors contributed to the disparities faced by African Americans in realizing the right to the enjoyment of the highest attainable standard of health, which included lack of access to health insurance coverage, lack of access to preventive services and care, and shortcomings related to a lack of diversity and of cultural competency among those giving the care. While the implementation of the Patient Protection and Affordable Care Act has led to 20 million people getting health insurance coverage, states with some of the widest health disparities in the country have rejected expansion of Medicaid, one of the main tools to cover the uninsured. Nine out of ten people who fall into the coverage gap live in the South, and black adults are more likely than any other racial group to be affected.[42] The impact of social determinants such as lack of access to good-quality and healthy housing conditions, lack of education and employment, and transportation barriers also continued to serve as impediments to full enjoyment of the right to health.

49. The Working Group learned that African Americans had limited access to food variety, including to healthy food, as they were concentrated in poor neighbourhoods with food outlets selling unhealthy and even expired food. African Americans have the highest rates of obesity, which is linked to "food deserts".

[41] See www.aclu.org/issues/juvenile-justice/school-prison-pipeline?redirect=fact-sheet/what-school-prison-pipeline.

[42] Rachel Garfield and Anthony Damico, "The coverage gap: uninsured poor adults in states that do not expand Medicaid — an update", 21 January 2016. Available from http://kff.org/health-reform/issue-brief/the-coverage-gap-uninsured-poor-adults-in-states-that-do-not-expand-medicaid-an-update.

50. The Working Group is concerned about the persistence of a de facto residential segregation in many of the metropolitan areas in the United States. In the Working Group's meeting with the Department of Housing and Urban Development, a series of maps were shown which not only starkly depicted high concentrations of African American families in low-income neighbourhoods and districts, but also reflected the correlation between racial segregation and socioeconomic disparities in access to health, education, and even access to adequate food, between the African American population and the white population. The Working Group was informed that people of African descent were more likely than other people with similar borrower characteristics to be victims of predatory lending, to receive higher-cost loans and to lose their homes to foreclosure. The Department of Housing and Urban Development recognizes that although the most blatant forms of housing discrimination have declined since the 1970s because of the implementation of the Fair Housing Act, the forms of discrimination that persist raise the costs of housing searches for members of minorities and restrict their housing options.

51. The Working Group was also informed about "racial steering", a practice employed by real estate brokers to guide prospective property buyers either towards or away from neighbourhoods on the basis of their race. In many of the places it visited, the Working Group heard from civil society that gentrification had had a detrimental and disparate impact on African Americans.

52. African American people are also concerned that they are disproportionately exposed to environmental hazards that impact on their health and standard of living. They are often forced to live in disadvantaged areas with hazardous environments (e.g. in proximity to industrial toxicity, power stations, flood zones and so on) and without access to social and commercial facilities. The most polluting industrial facilities, across a range of sectors from farming and mining to manufacturing, are more likely to be situated in poor and minority neighborhoods, including those of people of African descent. For instance, the Working Group is concerned about the possible health risks to African Americans on account of the incinerator project in Curtis Bay, Baltimore, and the lead-contaminated water in Flint, Michigan. The Working Group was also informed about the destruction of public housing in some cities; at the same time, public funding for new houses appears to be insufficient to meet the demands for new housing.

53. According to the Department of Housing and Urban Development, in 2015, of the more than half a million homeless people in the United States, African Americans constituted 40.4 per cent. They also constituted 27.8 per cent of the homeless people who were unsheltered.

54. Despite the recovery of the United States economy, the impact of the 2008 and 2009 recession on African Americans is still very much present. The unemployment rate among African Americans is almost twice the national unemployment rate. The Working Group is particularly concerned about the level of unemployment among young African Americans without a high school degree. In 2014, the annual income for African Americans was just under half the income of white Americans who are not Hispanic.

55. People of African descent continue to be underrepresented in management positions. In 2013, they accounted for only 7 per cent of workers in management occupations. Instead, African Americans disproportionately work in temporary jobs with less security and lower salaries. Nearly half a million African Americans earn the minimum wage. The Equal Employment Opportunity Commission continues to receive more than 30,000 complaints a year concerning racial discrimination.

C. Multiple forms of discrimination

56. The Working Group studied intersectionality of the different forms of discrimination faced by people of African descent and heard experiences of racial discrimination based on ethnicity, religion, socioeconomic status, sex and gender identity. The Working Group is particularly concerned by the increasing number of murders of transgender women of African descent and the increasing level of violence affecting them. Racial discrimination also disparately impedes the ability of African American women to maintain overall good health, control their sexuality and reproduction, survive pregnancy and childbirth, and parent their children. African American women in the United States die from pregnancy-related complications at a rate three to four times higher than that of white women.[41] The Working Group is particularly concerned about the fact that 37 per cent of the households headed by African American women live below the poverty line.[42]

57. The Working Group of Experts on People of African Descent shares the findings of the Working Group on the issue of discrimination against women in law and in practice in respect of African American women.[43] In particular, the Working Group of Experts on People of African Descent is concerned at the disproportionate number of African American women subjected to heightened levels of violence, including rape and sexual violence. It also deplores reports of police brutality and the increased number of killings of African American women by the police. Furthermore, it is disturbed at the persistent fatal consequences for women of the lack of gun control, particularly in cases of domestic violence.

V. Conclusions and recommendations

A. Conclusions

58. The Working Group welcomes the work of the bureaus and offices in all government departments and agencies, which implement the civil rights laws through the investigation of complaints, litigation, and the issuance of guidance, and by securing remedies, including compensation.

59. The Working Group acknowledges the Office for Access to Justice, of the Department of Justice, for its work to improve justice for all Americans, and the Civil Rights Division, also of the Department of Justice, for its work on investigations into excessive use of force by the police and on patterns of discrimination. The Working Group welcomes the steps taken to reform the criminal justice system and combat racial discrimination and disparities through initiatives including the Fair Sentencing Act; the Department's Smart on Crime and re-entry initiatives; the report and recommendations of the President's Task Force on 21st Century Policing, to strengthen community-police relationships across the country; the new Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation or Gender Identity; and the enforcement guidance on the consideration of arrest and conviction records in employment decisions under title VII of the Civil Rights Act of 1964.

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[41] Centers for Disease Control and Prevention, Pregnancy mortality surveillance system. See www.cdc.gov/reproductivehealth/maternalinfanthealth/pmss.html.

[42] United States Census Bureau (2015), American Community Survey one-year estimates, 2014, table S0201.

[43] See A/HRC/32/44/Add.2.

60. The Working Group also noted that during its visit, the Government adopted a series of executive actions to reduce the use of solitary confinement at the federal level by prohibiting the solitary confinement of juveniles, diverting inmates with serious mental illness to alternative forms of housing, and establishing that inmates should be housed in the least restrictive settings, among other issues. These changes are part of a larger effort to implement criminal justice reforms, including those now pending in Congress.

61. The Working Group noted White House initiatives such as My Brother's Keeper and the White House Initiative on Educational Excellence for African Americans, aimed at addressing opportunity gaps and improving educational outcomes for African Americans.

62. The Working Group noted the new report by the Charles Colson Task Force on Federal Corrections, which concluded that punitive mandatory sentences for drug crimes represent the primary driver for prison overcrowding.

63. The Working Group welcomes the abolition of the death penalty in three additional states since the Working Group's visit to the United States in 2010, as this form of torture and inhumane punishment is disproportionately used against African Americans.

64. The Working Group noted the important development in the area of health with the adoption of the Patient Protection and Affordable Care Act, which has allowed 2.3 million African American adults to gain medical health insurance.

65. The Working Group noted some positive developments at the state and local levels. The Working Group welcomes the measures taken in New York City that prohibit employers from asking about criminal history until an employee is hired. These measures also allow the issuance of municipal identification cards for undocumented migrants, and create a policy of issuing desk appearance tickets for certain offenders as an alternative to imprisonment for a misdemeanour offence. The Working Group also noted the decision to end the stop and frisk policy.

66. Similarly, the Working Group welcomes the steps taken in Illinois to combat the home foreclosure crisis that had especially affected African Americans. The Working Group also welcomes the measures taken by the mayor of Chicago to foster accountability in the police department following the Laquan McDonald case.

67. The Working Group welcomes the growing human rights movement in the United States, which has successfully advocated for social change. Following the epidemic of racial violence by the police, civil society networks such as Black Lives Matter, together with other activists, are strongly advocating for racial justice, legal and policy reforms, and citizen control over policing and other areas which directly target African Americans.

68. Despite the positive measures, the Working Group remains extremely concerned about the human rights situation of African Americans. In particular, the legacy of colonial history, enslavement, racial subordination and segregation, racial terrorism and racial inequality in the United States remains a serious challenge, as there has been no real commitment to reparations and to truth and reconciliation for people of African descent. Contemporary police killings and the trauma that they create are reminiscent of the past racial terror of lynching. Impunity for State violence has resulted in the current human rights crisis and must be addressed as a matter of urgency.

69. **Racial bias and disparities in the criminal justice system, mass incarceration and the tough-on-crime policies disproportionately impact African Americans. Mandatory minimum sentencing and the disproportionate punishment of African Americans including with the death penalty are of grave concern.**

70. **The Working Group identified some of the main barriers to tackling impunity for killings by the police as: (a) the lack of independence of the initial investigations, which in the majority of cases are conducted by the same police department that the alleged perpetrator is a member of; (b) the wide discretion of prosecutors to determine when and how to present charges; and (c) the fact that some federal, state and county practices are not in line with international standards as regards the use of force.[40]**

71. **The surge in incarceration has been driven since the 1980s by changes in criminal justice policies as part of the so-called "War on Drugs". Policies enacted at the federal and state levels emphasizing harsher sentencing rules (such as the more frequent use of mandatory minimums and of "three strikes" rules), longer prison sentences and higher conviction rates have been applied with a racial bias, with deep collateral damage on African Americans.**

72. **Disparities in the enforcement of policies can be found in the different approaches adopted by states to address issues such as racial profiling, the presence of police in schools, the criminalization of homelessness, limitations on the use of lethal force by law enforcement officials, the use of solitary confinement and the prosecution of juvenile offenders as adults, among others. The United States is also not acting with due diligence to protect the rights of African Americans, as evidenced by the lack of gun control and the stand-your-ground laws, among other things.**

73. **The Working Group is concerned about the lack of an official and reliable national system to track killings and excessive use of force committed by law enforcement officials while on duty. The Working Group is also deeply concerned about the low number of cases in which police officers have been held accountable. It identified that the federal, state and county regulations that are not in line with international standards on the use of force and firearms are some of the main barriers to police accountability.**

74. **Mass incarceration has had a disproportionately high impact on people of African descent. The devastating impact of the "War on Drugs" has led to mass incarceration and is compared by African Americans to enslavement, due to the exploitation and dehumanization of African Americans. The costs of mass incarceration practices must be measured in human lives — particularly the generations of young black men and women who serve long prison sentences and are lost to their families and to society at large.**

75. **The Working Group is also concerned about the criminalization of poverty, which disproportionately affects African Americans. There has been an increase in the imprisonment of people for minor offences and of those who are unable to pay debts due to increases in fines and fees. They are detained in debtor prisons and made**

[40] Amnesty International has identified that state law on the use of force fails to comply with international standards, which require that lethal force should only be used as a last resort by law enforcement officials when strictly necessary to protect themselves or others against imminent threat of death or serious injury. See Amnesty International, "Deadly force: police use of lethal force in the United States" (2015). Available from www.amnestyusa.org/sites/default/files/amusa_deadlyforcereportjune2015.pdf.

to work off their debt. As illustrated by the Department of Justice investigation of the Ferguson Police Department, in some jurisdictions the imposition of fines is a way to secure revenues rather than to maintain public security. This creates numerous problems for individuals and families. There is also an excessive punishment of poor children for minor offences.

76. State laws establishing mandatory minimum sentences and zero tolerance policies have been applied with racial bias. Thousands of young African Americans have been placed in detention centres, without addressing the root causes of crime, or guaranteeing better security to their communities; nor have they been offered effective rehabilitation. People who have served their time in prison continue to be stigmatized when they are released. Their criminal records impede them from finding a job, getting adequate housing or accessing social programmes, and from voting. Some re-entry programmes are not well funded, and re-entry programmes are not present countrywide.

77. Racial profiling is a rampant practice and seriously damages the trust between African Americans and law enforcement officials. Also, some parts of the media routinely portray African Americans as criminals and this negatively impacts the perception that society in general has of African Americans. These practices not only erode trust but also lead to fatal consequences. For example, Philando Castile was stopped by law enforcement dozens of times before he was eventually shot and killed.

78. The Working Group expresses deep concern about the continued existence of the death penalty in 31 states and at the federal level.

79. While noting the recent executive actions on solitary confinement, the Working Group remains concerned about its use in prisons, juvenile detention centres and foster care, at both the federal and state levels. The Working Group is particularly concerned about its negative impact on children.

80. The Working Group is concerned about the underage prosecution of children as adults in the United States. Children are detained in adult prisons and jails, putting them at risk of sexual assault and abuse. Juveniles should be treated as juveniles, no matter what crime they are alleged to have committed, and must be held in a juvenile facility. The Working Group is also concerned at the use of police in schools and at school discipline being criminalized, subjecting African American children in particular to severe punishments. These practices are a violation of children's human rights and should be eliminated.

81. The persistent gap in almost all the human development indicators, such as life expectancy, income and wealth, level of education, and even food security, between African Americans and the rest of the United States population, reflects the level of structural and institutional discrimination that creates de facto barriers for people of African descent to fully exercise their human rights.

82. Geographic location and zip code can determine to some extent the future of young African Americans. People from poor black neighbourhoods are more likely to face lower educational attainment, more exposure to violence and crime, a tense interaction with the police, fewer employment opportunities, environmental degradation and also low life expectancy rates.

83. African Americans in many cities are facing a housing crisis, in which people are not able to pay their rents or mortgages, and even less to purchase a new house, and are subsequently subject to de facto gentrification.

84. The Working Group acknowledges that federal civil rights legislation, put in place in the 1960s and 1970s, has had a positive impact by redressing individual and even institutional cases of racial discrimination. However, hearing the testimonies of African Americans in different parts of the country, the Working Group is concerned about the implementation of civil rights laws not being sufficiently effective to overcome and transform the structural racial discrimination against African Americans.

85. The complex organizational structure of the legal system, with the independence of federal, state and county jurisdictions, and the lack of direct applicability of international human rights law and policies, creates gaps that impact deeply on the human rights of African Americans.

86. The Working Group is concerned that international human rights treaties cannot be invoked in national courts, as in most cases there is no enabling legislation and they have been declared non-self-executing.

87. The following recommendations are intended to assist the United States in its efforts to combat all forms of racism, racial discrimination, Afrophobia, xenophobia and related intolerance.

B. Recommendations

88. The Working Group reiterates the recommendation that it made after its visit to the United States of America in 2010 to establish a national human rights commission in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The Government should establish within this body a specific division to monitor the human rights of African Americans.

89. In addition to the above, the Working Group urges the Government of the United States of America to consider the ratification of the core international human rights treaties to which the United States is still not a party, with a view to removing any gaps in the protection and full enjoyment of rights therein. It also encourages the United States to ratify regional human rights treaties and to review the reservations related to the treaties that it has signed or ratified.

90. Federal and state laws should be adopted that incorporate the International Covenant on Civil and Political Rights and other international human rights treaties, as well as regional treaties. To this end, an inter-agency body should be created, composed of high-level officials from the executive, the legislature and the judiciary at both the federal and the state levels, who will take steps to give effect to the decisions, resolutions, views, observations and recommendations of United Nations human rights bodies such as the Human Rights Council, the treaty bodies and special procedures, and of regional human rights bodies.

91. There is a profound need to acknowledge that the transatlantic trade in Africans, enslavement, colonization and colonialism were a crime against humanity and are among the major sources and manifestations of racism, racial discrimination, Afrophobia, xenophobia and related intolerance. Past injustices and crimes against African Americans need to be addressed with reparatory justice.

92. Monuments, memorials and markers should be erected to facilitate public dialogue. Education must be accompanied by acts of reconciliation, to overcome acts of racial bigotry and legacies of racial injustice. Federal and state legislation should be passed recognizing the negative impact of enslavement and racial injustice.

93. During the International Decade for People of African Descent, public forums or hearings should be held with African Americans in order to create a constructive and open dialogue in which organizations and social movements can share experiences and engage with policymakers and institutions of the local, state and federal government on ways to address the crisis being experienced by American society.

94. The Working Group encourages Congress to pass H.R. 40 — the Commission to Study Reparation Proposals for African-Americans Act — which would establish a commission to examine enslavement and racial discrimination in the colonies and the United States from 1619 to the present and to recommend appropriate remedies. The Working Group urges the United States to consider seriously applying analogous elements contained in the Caribbean Community's Ten-Point Action Plan on Reparations, which includes a formal apology, health initiatives, educational opportunities, an African knowledge programme, psychological rehabilitation, technology transfer and financial support, and debt cancellation.

95. The Working Group encourages the Government of the United States of America to elaborate a national action plan to fully implement the International Convention on the Elimination of All Forms of Racial Discrimination and comprehensively address racism affecting African Americans.

96. The Government should increase engagement with human rights organizations and civil society and should fund them with the aim of implementing the universal periodic review recommendations made to and accepted by the United States.

97. The Working Group urges the Government to ensure that recent policies undertaken to address racial disparities will be further implemented at the federal and state levels.

98. The Working Group urges Congress to expedite the passing of all pending criminal justice reform bills, including the End Racial Profiling Act and the Second Chance Reauthorization Act. It also welcomes the bipartisan support for bill S.2123 — the Sentencing Reform and Corrections Act of 2015 — which among other things proposes drastically reducing the use of mandatory minimum sentencing and in the Working Group's opinion is crucial to achieving comprehensive criminal justice reform.

99. The Working Group recommends urgent action to ensure accountability for police violence against African Americans: by improving the reporting of violations involving the excessive use of force and extrajudicial killings by the police, and ensuring that reported cases of excessive use of force are independently investigated; by ensuring that alleged perpetrators are prosecuted and, if convicted, are punished with appropriate sanctions; by ensuring that investigations are re-opened when new evidence becomes available; and by ensuring that victims or their families are provided with remedies. The Working Group also calls for implementation of the recommendations in the final report of the President's Task Force on 21st Century Policing.

100. The Working Group recommends that the Government step up its efforts to prevent excessive use of force by law enforcement officials by ensuring compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, of 1990.

101. Security policies in schools should be revisited. Policing in schools should be abolished.

102. Misdemeanour laws affecting schoolchildren should be repealed, such as the misdemeanour law in South Carolina under which school disturbance constitutes a misdemeanour.

103. The use of restraint and seclusion in schools should be prohibited. Early counselling should be given to students with mental health issues. Special attention and protection must be given to students with autism, attention deficit hyperactivity disorder and other similar disabilities.

104. The Working Group recommends that the Government develop guidelines on how to ensure that school discipline policies and practices are in compliance with international human rights standards. Positive Behavioural Interventions and Supports and restorative practices in school discipline should be used in order to reduce disciplinary incidents and improve learning in schools.

105. Males should be separated from females in detention. Younger prisoners should be separated from adults. Alternatives to imprisonment for youth, such as intervention and diversion, should be explored.

106. In imposing sentences, the welfare of the family of the accused should be taken into account, with particular attention given to the best interests of the child.

107. Appropriate measures should be adopted to prevent excessive bail. Alternatives to detention should also be explored.

108. Community policing strategies should be developed to give the community control of the police that are there to protect and serve them. The Working Group recommends that communities establish boards that would elect police officers they want playing this important role.

109. Before non-payment of a court fine or fee is treated as a civil contempt of court charge, it should first be determined whether the individual has the ability to pay. Imprisonment should not be offered as a way of paying off the debt. If the debt cannot be paid, the fee should not be levied.

110. The Working Group also recommends that the prison reform processes and policies include specific policies to address the increasing rate of incarceration of African American women.

111. Solitary confinement should be banned absolutely for being in violation of international human rights law standards, particularly those found in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in the Standard Minimum Rules for the Treatment of Prisoners.

112. The Working Group recommends that the Government allow independent monitoring of places of detention in the United States, and in this connection that it consider inviting the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. As part of a call for greater expression of commitment to the rights of detainees, the Working Group takes the opportunity to urge the Government to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which creates a mechanism for unrestricted and unannounced visits to places of detention.

113. International human rights standards should be observed in the criminal justice system. The Working Group recommends the abolition of the death penalty throughout the United States.

114. **The Working Group calls upon the Government to ensure that all states repeal laws that restrict voting rights. In particular, it urges reinstatement of the voting rights of persons convicted of a felony who have completed their sentences.**

115. **Targeted measures should be developed to raise awareness of and reduce crimes against the lesbian, gay, bisexual, transgender, queer and intersex community, in particular against transgender women.**

116. **Asylum seekers should not be imprisoned pending a determination of their application for refugee status. The right to counsel and the right to an interpreter should be respected at all times.**

117. **The Working Group recommends extending access to affordable health care to a greater part of the population. Health policies and programmes should place particular priority on access to quality and affordable health care with targeted goals for reducing the maternal mortality of African American women.**

118. **Consistently, the school curriculum in each state should reflect appropriately the history of the transatlantic trade in Africans, enslavement and segregation.**

119. **The Department of Education should study zero tolerance policies and their disparate impact on African American students. A task force should be created to specifically focus on realigning and re-engaging students who have been dismissed from educational institutions as part of a zero tolerance policy.**

120. **The Working Group recommends upholding the right to adequate standards of living, including adequate food, housing, and safe drinking water and sanitation. The Government should immediately halt the demolition of public housing if replacement units have not been guaranteed. All such activities must be undertaken only through prior and informed consent and with the participation of the people affected.**

121. **The Working Group urges the Government to strengthen the implementation of Executive Order 12898, including through the allocation of adequate resources.**

122. **The Government of the United States of America should undertake a review of policies to improve protection of the environment and ensure that environmental justice is provided.**

123. **The Working Group encourages the Government to undertake impact-oriented activities in the framework of the International Decade for People of African Descent (2015-2024).**